Supreme Court, U.S.
FILED

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No. _____

In The

Supreme Court of the United States

October Term, 1996

PERCY HARRIS, JR.,

Petitioner,

-vs-

CITY OF HAMTRAMCK; HAMTRAMCK CITY COUNCIL; MICHAEL ZEBROWSKI, CONTROLLER; JOSEPH J. GRECKI

Respondents

Petition For Writ of Certiorari
To The Supreme Court
Of The State of Michigan

PETITIONER FOR WRIT OF CERTIORARI

Percy Harris, Jr., In Pro Se
P.O. Box No. 14231
Detroit, Michigan 48214
1-810-968-8362
1-313-267-6227

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131 pp

QUESTIONS PRESENTED

1. Does state law prevail in civil cases in the federal court's in the host state, under **Article No. 1, Section No. 10; Article No. 4, Section No. 1** of the **U.S.C. A and 28 U.S.C. 1652?**

The Michigan Court of Appeals has refused to hear this question.
The Michigan Supreme Court has refused to hear this question.

Petitioner says . . . . . Yes
Respondents say . . . . . No

2. Did the state court lack **jurisdiction** or **authority** to enforce a federal court civil consent judgment **(February 4, 1985)** that on its face was in violation of state law **(MCL 38.514 and MCL 38.556 (d); Chapter XIII, Section No. 4,** of the Hamtramck City Charter; and **Article No. 9, Section No. 24,** of the Michigan Constitution of 1963?

The Michigan Court of Appeals has refused to answer this question.
The Michigan Supreme Court has refused to answer this question.

Petitioner says . . . . . Yes
Respondents say . . . . . No

3. Was Petitioner denied **due process** and the **equal protection of the law** and the **right of free**

speech under both **Article No. 1, Section Nos. 1, 2, 5, and 17** of the Michigan Constitution of 1963 and the 1st, 5th and 14th Amendments of the U.S.C.A., when Respondents removed him from office for having appeared on the **January 5, 7, 1979**, media interviews, referenced in **App No. 31;** off duty; not in uniform; and having exercised his right of freedom of speech?

The Michigan Court of Appeals has refused to hear this question.
The Michigan Supreme Court has refused to hear this question.

Petitioner says . . . . . Yes
Respondents say . . . . . No

4. Did Respondents lack **jurisdiction** or **authority** to even hold a hearing upon the subject matter of Petitioner's exercise of his constitutionally protected **1st Amendment U.S.C.A.** right of **freedom of speech** on the **January 5, 7, 1979**, media interviews?

The Michigan Court of Appeals has refused to hear this question.
The Michigan Supreme Court has refused to hear this question.

Petitioner says . . . . . Yes
Respondents say . . . . . No

5. Was Petitioner denied the **equal protection of the law (MCL 38.514)** and **due process** under both **Article No. 1, Section Nos. 1, 2, 17and 20 of the Michigan Constitution of 1963, and the 5th and 14th Amendments of the U.S.C.A.**, when he was removed from office upon **Police Charges** that were **not** amongst the thirteen **(13) categories of offenses** set forth in the statute, or **one of the articulated rules** of the **Hamtramck Civil Service Commission** set forth in **Rule XII, Section No. 5, Cause For Discharge or Reduction, Paragraphs (a-t)**, for which he could be removed, **for cause?**

The Michigan Court of Appeals has refused to hear this question.
The Michigan Supreme Court has refused to hear this question.

Petitioner says . . . . . Yes
Respondents say . . . . . No

6. Did Respondents lack **jurisdiction** or **legal authority** to remove Petitioner from office upon **"Police charges,"** under **MCL 38.514?**

The Michigan Court of Appeals has refused to hear this question.
The Michigan Supreme Court has refused to hear this question.

Petitioner says . . . . . Yes
Respondents say . . . . . No

7. Was Petitioner denied **due process** and the **equal protection of the law (MCL 38.514)** under both Article No. 1, Section Nos. 1, 2, 17, and 20 of the Michigan Constitution of 1963 and the 5th and 14th Amendment, U.S.C.A., when the **"Police charges"** for which he was removed from office, were **not** brought against him within **(90) days** after the Respondents became aware of the January 5, 7, 1979, media interviews as required by said statute, until May 18, 1979?

The Michigan Court of Appeals announced a **non-discovery rule** in the below listed cases on March 20, 1995 and on May 12, 1995 respectively.

The Michigan Supreme Court has ruled upon this question, in ***Goodridge v Ypsilanti Twp Bd.* 209 Mich App 344; 529 NW2d 665 (1995)** reversed and ***Command Officers Association of Michigan v city of Allen Park,* 210 Mich App 485; 534 NW2d 258 (1995)** reversed, reversing the **non-discovery rule** announced **in *Goodridge,* supra,** and re-instating the **discovery rule** of ***Solomon v Highland Park* CSC 47 Mich App 536 540 (1973).** --- ***Command Officers,* supra,** was vacated on October 4, 1996, by the Court of Appeals -- ***Goodridge*** has yet to be decided by the Court of Appeals; nevertheless, the discovery rule can have no force and effect the instant case, inasmuch as it is directly analogous to ***Solomon* supra**.

Petitioner says . . . . . Yes
Respondents say . . . . . No

8. Did the Respondents **lack jurisdiction** or **legal authority** under the statute **(MCL 38.514)** to remove Petitioner from office upon **"Police charges,"** which were untimely, in that they were **not** filed and served upon Petitioner within 90 days of the date, **January 5, 7, 1979** of discovery of the occurrence of the media interviews, but on **May 18, 1979?**

The Michigan Court of Appeals has refused to hear this question.
The Michigan Supreme Court has refused to hear this question.

Petitioner says . . . . . Yes
Respondents say . . . . . No

9. Did Respondents, based upon their own documents, i.e., Respondents January 12, 1979, notification that they were aware of the January 5, 7, 1979, media interviews, from which charges might be brought against Petitioner, etc., served upon Petitioner on January 13, 1979; and the May 18, 1979, list of **"Police charges"** filed and served upon Petitioner based upon the 90 day statute of limitations for filing of charges against a policeman or fireman under **MCL 38.514, lack jurisdiction** and **authority,** much less legal charges upon which to remove Petitioner?

The Michigan Court of Appeals has refused to hear this question.
The Michigan Supreme Court has refused to hear

this question.

Petitioner says . . . . . .Yes
Respondents say . . . . . .No

10. Did the states' intermediate appellate court (Michigan Court of Appeals) **lack jurisdiction** and **legal authority** to enforce the provisions of a Federal Court Consent Judgment, February 4, 1985, which diminished Petitioner's vested pension benefit by 40%; from 100% of one-half (1/2) pay to 60% of one-half (1/2) pay, in direct violation of both **MCL 38.556 (D); Article No. 9, Section No. 24,** of the Michigan Constitution of 1963; and Chapter 13, Section 4 of the Charter of the City of Hamtramck?

The Michigan Court of Appeals has said No
The Michigan Supreme Court has refused to hear this question.

Petitioner says . . . . . Yes
Respondents say . . . . . No

11. Was Petitioner denied the **equal protection under the law (MCL 38.556 (d); Chapter XIII, Section 4,** of the Hamtramck City Charter; **Article No. 9, Section No. 24,** of the Michigan Constitution of 1963), and **due process** under **Article No. 1, Section Nos. 1, 2, 17, and 20 of the Michigan Constitution of 1963** and the **5th and 14th Amendments of the U.S.C.A.,** when through

fraudulent concealment **(MCLA 600.5855)** the Respondents attempted to diminish Petitioner's pension benefit from 100% of one-half (1/2) pay to 60% of one-half (1/2) pay in the **"fraudulent"** February 4, 1985, Federal court Consent Judgment in direct violation of **MCL 38.556 (D); Chapter XIII, Section No. 4;** and **Article No. 9, Section No. 24,** of the Michigan Constitution of 1963?

The Michigan Court of Appeals has said No
The Michigan Supreme Court has refused to hear this question.

Petitioner says . . . . . Yes
Respondents say . . . . . No

12. Did the state's intermediate appellate Court (Michigan Court of Appeals) deny Petitioner the **"equal protection of the law"; "due process";** and **"access to the courts"** under both **Article No. 1, Section Nos. 1, 2,17 and 20,** of the Michigan Constitution of 1963 and the 5th and 14th Amendments of the U.S.C.A.; when through an order dated November 14, 1995, ordered oral arguments on the unauthorized brief filed by Petitioner's fired, former attorney, **Eleanor Cattron-Smith**, and Respondents reply brief; and denied both Petitioner's Motion To Delete said brief and substitute his own encapsulating Petitioner's reasons and arguments for relief from judgment, and Petitioner's right to participation in said arguments (App No.)?

The Michigan Court of Appeals has said No
The Michigan Supreme Court has refused to hear this question.

Petitioner says . . . . . Yes
Respondents say . . . . . No

13. Did the state's intermediate appellate court (Michigan Court of Appeals) deny Petitioner the **"equal protection of the law;** **"due process;** and **"access to the courts,"** under both **Article No. 1, Section Nos. 1, 2, 13, 17 and 20 of the Michigan Constitution of 1963** and the **4th and 14th Amendments of the U.S.C.A.;** when that court refused to accept his March 28, 1994 affidavit notifying it that Petitioners attorney, **Eleanor Cattron-Smith,** had been dismissed under its own **MRPC 1.16 (A)(3)(b);** refused to accept Petitioner's pleading in his own proper person, forcing him to file a formal complaint with the court to accomplish that result (App No.64 & 65, Petition No. 96-522); then refusing to strike the unauthorized brief by Smith on December 8, 1994 and March 18, 1996.

The Michigan Court of Appeals has said No
The Michigan Supreme Court has refused to hear this question.

Petitioner says . . . . . Yes
Respondents say . . . . . No

14. Did the state's intermediate appellate court (Michigan Court of Appeals) deny Petitioner the **"equal protection"** of the law **(MCL 38.514; MCL 38.556 (D); and Hamtramck City Charter, Chapter 13, Section 4; and Article No. 9, Section No. 24, of the State Constitution)** and **"due process"** under both **Article No. 1, Section Nos. 1, 2, 17, and 20, of the Michigan Constitution of 1963,** and the **5th and 14th Amendments of U.S.C.A.,** when it failed and refused to remand the matter of the defective February 4, 1985, Federal Court Consent Judgment back to the Federal District Court, so that said judgment could be vacated, and/or brought into line with the above statutes; charter provisions; and Article No. 9, Section No. 24, of the State Constitution?

The Michigan Court of Appeals has said No
The Michigan Supreme Court has refused to hear this question.
Petitioner says . . . . . Yes
Respondents say . . . . . No

15. Was Petitioner denied due process and equal protection of the law **(MCL 38.514); Chapter XIII, Section No. 4., of the Hamtramck City Charter; and Article No. 9, Section No 24**, when the Michigan Court of Appeals refused to enforce his right of contract to a full 100% of one (1/2) half pay pension benefit,rather than the 60% of one (1/2) half pay, corruptly obtained in the fraudulent February 4, 1985 Federal Court consent judgment that was

constitutionally protected under both **Article No. 1, Section No. 10; Article No. 9, Section No. 24, of the Michigan Constitution; and Article No. 1, Section No. 1, and Article No. 4, Section No. 1, of the U.S.C. A.?**

The Michigan Court of Appeals has refused to hear this question.
The Michigan Supreme Court has refused to hear this question.

Petitioner says . . . . . Yes
Respondents say . . . . . No

16. Did Respondents lack jurisdiction and authority to diminish Petitioner's 100% of one (1/2) half pay pension benefit, constitutionally protected from diminishment or impairment under **Article No. 9**, **Section No. 24** of the Michigan Constitution of 1963, brought under the fig leaf of the fraudulent **(MCLA 600.5855) February 4, 1985,** Federal Court Consent Judgment?

The Michigan Court of Appeals has refused to hear this question.
The Michigan Supreme Court has refused to hear this question.

Petitioner says . . . . . Yes
Respondents say . . . . . No

17. Was Petitioner denied due process and the equal protection of the law, when the Michigan Court of Appeals refused to enforce his right of contract to a 100% of one (1/2) half pay pension benefit under **Article XI, of his 1977-1979, Labor, Collective Bargaining Agreement,** constitutionally protected under **Article No. 1, Section No. 10 and Article No. 9, Section No. 24 of the Michigan Constitution; and Article No 1, Section 10 and Article No. 4, Section No. 1, of the U.S.C.A.?**

The Michigan Court of Appeals has refused to hear this question.
The Michigan Supreme Court has refused to hear this question.

Petitioner says . . . . . Yes
Respondents say . . . . . No

18. Did the Respondents lack jurisdiction or authority under **Article XI, of Petitioner's 1977-1979, Labor, Collective Bargaining Agreement and Article No. XIII, Section No. 4, of the Hamtramck City Charter** to diminish his 100% of one (1/2) half pay pension benefit to 60% of one (1/2) half pay under the fig leaf of the **"fraudulent" (MCLA 600.5853)** February 4, 1985, Federal Court Consent Judgment?

The Michigan Court of Appeals has refused to hear this question.
The Michigan Supreme Court has refused to hear this question.

Petitioner says . . . . . .Yes
Respondents say . . . . . .No

19. Was Petitioner denied due process and the equal protection of the law when the Michigan Court of Appeals refused to endorce his right of contract under **Article XIII of his 1977-1979, Labor, Collective Bargaining Agreement**, which contained an absolute prohibition against charges for discipline, brought on (May 18, 1979), more than five (5) days after the date of the occurrence of the event (the January 5, 7, 1979, media interviews), constitutionally protected under both **Article No. 1, Section No. 10, of the Michigan Constitution of 1963, and Article No. 1, Section No. 10 and Article No.4, Section No. 1, of the U.S..C.A.**?

The Michigan Court of Appeals has refused to hear this question.
The Michigan Supreme Court has refused to hear this question.

Petitioner says . . . . . Yes
Respondents say . . . . . No

20. Did Respondents lack jurisdiction or authority under **Article No XIII, of Petitioner's 1977-1979, Labor, Collective Bargaining Agreement** to bring any charges whatsoever (May 18, 1979), more than five (5) days after the event (January 5, 7, 1979, media interviews), for which discipline could be brought, much lest dismissal from office, based solely upon Respondent's correspondence dated,

January 12, 1979, served upon Petitioner on **January 13, 1979**, by then sergeant Philip Peczeniuk?

The Michigan Court of Appeals has refused to hear this question.
The Michigan Supreme Court has refused to hear this question.

Petitioner says . . . . . .Yes
Respondents say . . . . . .No

21. Did Respondents lack jurisdiction or authority to remove Petitioner from office under **(MCL 38.514),** which contains a **(90) day statute of limitations** from the date of the occurrence of the violation to the date that charges must be **brought and served** upon the party for which discipline is sought, upon charges (May 18, 1979) accruing from the **(January 5,7, 1979 media interviews**) based upon their own January 12, 1979, correspondence to Petitioner stating that they knew of the media interviews, under the then extant, **"discovery rule"** of ***Solomon v Highland Park CSC,*** **47 Mich App 536, 540 (1973),** over ruled on **March 20, 1995**, in ***Goodridge v. Ypsilanti Twp Bd.*****, 209 Mich App 344, 351 (1995)**; but reinstated by the **Michigan Supreme Court, 451 Mich 446, 456, on May 12, 1996?**

The Michigan Court of Appeals has refused to hear this question.
The Michigan Supreme Court has refused to hear this question.

Petitioner says . . . . . .Yes
Respondents say . . . . . .No

22. Was Petitioner denied due process and the **equal protection of the law (MCLA 24.306 Sec. (1)(a - f))** because his removal from office was brought in violation of both Article No. XIII, the five (5) day rule of his Labor, Collective Bargaining Agreement and **MCL 38.516,** the (90) day rule?

The Michigan Court of Appeals has refused to hear this question.
The Michigan Supreme Court has refused to hear this question.

Petitioner says . . . . . .Yes
Respondents say . . . . . .No

23. Is Petitioner entitled to immediate reinstatement and back pay under the statute, **MCL 38.514** and **Article No. 6, Section No. 24** of the Michigan Constitution of 1963 because of the egregious violations of same in the instant case?

The Michigan Court of Appeals has refused to hear this question.
The Michigan Supreme Court has refused to hear this question.

Petitioner says . . . . . .Yes
Respondents say . . . . . .No

24. Was Petitioner denied due process and equal protection of the law, **Article No. 6, Section No. 6,** of the Michigan Constitution of 1963 and **MCLA 600. 229,** when the Michigan Supreme Court refused to give him a written opinion setting forth "a concise statement of facts and reasons - - - - for each denial of leave to appeal," as required by **Article No. 6, Section No. 6**,etc?

The Michigan Court of Appeals has refused to hear this question.
The Michigan Supreme Court has refused to hear this question.

Petitioner says . . . . . .Yes
Respondents say . . . . . .No

25. Was Petitioner's interest in the instant case **"prejudiced"** by the trial judge's improper contact with the two since retired federal judges, Ralph B. Guy, Jr., and George E. Woods, Jr., previously involved in the matter; without notice; beyond the presence of Petitioner and his counsel, about material issues, (Petitioner's National Security Agency NSA - Minaret - - - - FBI – Cointelpro Subversive File No. (69)(1)(7) 76 H/Michigan, Attorney General - Michigan State Police Red Squad Subversive File No. 0732604 and the question of Jurisdiction) involved in the case or before the court?

The Michigan Court of Appeals has refused to hear this question.
The Michigan Supreme Court has refused to hear this question.

Petitioner says . . . . . .Yes
Respondents say . . . . . .No

LIST OF ALL PARTIES

The following is a list of all parties to the proceeding in the Michigan Supreme Court:

1. Percy Harris, Jr., Appellant/Petitioner;
2. City of Hamtramck, Appellee/Respondent;
3. Michael Zebrowski, Appellee/Respondent;
4. Joseph J. Grzecki, Appellee/Respondent;

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Michigan Supreme Court order dated May 31, 1996, denying Leave to Appeal (without a written opinion). . . . . App 1

Michigan Supreme Court order dated . . . . . **App 2**
August 30, 1996, denying motion for reconsideration (without a written opinion).

A fifty dollar money order, dated . . . . . **App 3**
September 16, 1996, in payment for Motion for Stay on order, dated August 30, 1996.

A letter from the Supreme Court Clerk . . . . **App 4**
Corbin Davis, dated September 16, 1996 returning Petitioner's $50.00 money order in payment for Motion for Stay.

Michigan Court of Appeals Order dated . . **App 6**
October 19, 1996, denying the five (5) motions.

Michigan Court of Appeals Order, dated . . . **App 8**
October 19, 1995, denying Motion To Strike and Motion For Publication of a Written Opinion.

Michigan Court of Appeals Order . . . . . **App 9**
dated December 8, 1994, denying six (6) of Petitioner's motions.

Michigan Court of Appeals Order . . . . . **App 10**
dated December 8, 1994, denying two (2) of Petitioner's motions, and Court's Order assessing Petitioner $200.00 costs for additional work incurred by the courts by this Court in processing the motions.

A letter dated November 14, 1995, ... **App 12**
from the Court of Appeals to Petitioner, informing him that No. 166601 would be on call by the court, excluding Petitioner (Appellee's reply brief to the unauthorized brief filed on May 2, 1994, by fired former attorney, Eleanor Cattron-Smith would be heard, which the court refused to strike).

A copy of an official docket record,. . . . . **App 14**
dated November 21, 1995 showing that Petitioner's interlocutory appeal of the denial of mandamus had been pending since July 25, 1995.

Michigan Court of Appeals Order, ... **App 15**
dated January 9, 1996, denying three (3) motions.

Michigan Court of Appeals Order, ... **App 16**
dated April 18, 1996, denying amended motion for rehearing.

Michigan Court of Appeals . . . . . **App 17**
Unpublished Opinion, dated January 26, 1996.

A copy of MAL 38.514. . . . . **App 25**

A copy of Hamtramck Civil Service . . **App 28,29**
Commission Rule XII Termination of Service, Section 5, Cause For Discharge,or Reduction, Paragraph (b) as it actually appears in the rule, a copy of which was obtained from Mrs. Lottie Daniels on August 20, 1996.

A letter dated September 10, 1970,. . . . . **App 34**
from the late chief of police, Arthur Chojnacki, to then Hamtramck Public Safety Director, Richard Wicz, reporting on "Police Charges" brought against Petitioner, instigated by the NSA-Minaret-FBI-Cointelpro Subversive File No.(69)(1)(7)67-14 & Red Squad File No.0732604.

A copy of a fabrication of Rule XII, . **App 39 & 40**
Section 5, Cause For Discharge or Reduction, Paragraph (b), creating the false impression that the commission had no choice but to remove Petitioner from the police department upon his then extant conviction for felonious assault/w/gun, *People v Percy Harris Jr.*, 43 Mich App 746 (1973), which, in fact, was not true, . . .18 U.S.C. 241 and 242, and 42 USC 1985 (2)(3), etc.

A transcript of Petitioner's August 20,. . . . **App 45**
1979, civil service hearing, showing clearly that the three "Police charges" before the commission, and upon which he was removed from office, were not amongst the thirteen (13) categories of offenses in MAL 38.514, and/or Rule XII, Section 5, Cause for Discharge or Reduction for which he could legally be removed.

A copy of an internal memorandum . . . . . **App 49**
from the late Assistant U.S. Attorney Frederic S. Van Tiem, dated March 14,1977, to the Civil Rights Division Employment Section in Washington, referencing Petitioner's August 30, 1971, complaint to then Assistant U.S. Attorney, Ralph B. Guy, Jr., about the "fraudulent", "bad faith" criminal prosecution in 43 Mich App 746 (1973); the FBI's September 9, 1971 response to Guy (Petition No. 96-522 App. 49) encapsulating Petitioner's FBI Cointelpro Subversive File No. (69)(1)(7)67H; and Petitioner's October 16, 1976, second request to then Assistant U.S. Attorney, Philip Van Dam asking for an investigation. Both Van Tiem and Van Dam were at one time chief assistants to Ralph B. Guy, as A.U.S. Guy as Federal District Judge had had Petitioner's case transferred to his docket on June 17, 1976, three (3) days after the turn over of the Cointelpro files in *Hampton v Hanrahan,* 600 F2d, 600-641 (1979).

A copy of a response to an appeal of. . . . **App 50**
denial (Executive Order 12958, by the Chicago FBI office) of the disclosure of two (2) NSA-Minaret---FBI---Cointelpro illegal (18 U.S.C. 2511(a)(c)(d) electronically intercepted telephone conversations (69)(1)(7) and (69)(13)(12) between Petitioner and his cousin Dorothy Johnson, at the now defunct Chicago Black Panther Party Day Care Center, *Hampton,* at 641, forming Petitioner's FBI Subversive File No. (69)(1)(7) 67-14, dated September 16, 1996, signed by Richard L. Huff.

By way of reference, twice before, on February 24, 1983, and April 10, 1990, the Chicago FBI denied disclosure under Executive Order No. 12356.

A copy of a letter dated January 12,. . . . . **App 52**
1979, from Chief of Police John Sitek, to then lieutenant Percy Harris, Jr, served upon Harris on January 13, 1979, establishing uncontrovertible documentary evidence that the chief knew, no later than January 12, 1979, about the January 5, 7, 1979, media interviews; and Article XIII, of Petitioner's 1977-1979 Labor Collective Bargaining Agreement contained an absolute prohibition against bringing charges more than five (5) days after the event.

A copy of a letter dated May 18, 1979 . . . **App 53**
from then Chief of Police, John Sitek, informing Petitioner that he, Sitek had preferred five (5) "Police charges" Petitioner in part because of the January 5, 7, 1979 media interviews; clearly indicative of the fact that the police charges had been brought more than five (5) days after the date of the media interviews and contractually void; more than (90) days after the January 12, 1979 correspondence (App 52), and therefore statutorily void.

A copy of a letter dated May 21, 1979,. . . **App 54**
from then chief of police, John Sitek, informing Petitioner that he had been relieved of his police powers.

A copy of a letter dated May 18, 1979, . **App 56**
from then chief of police, John Sitek, to the then Hamtramck Public Safety Director, Henry Jablynski, setting forth his, chief Sitek's facts and reasons for the permanent dismissal of Petitioner from the Hamtramck Police Department.

A copy of a letter dated December 1,. . . . **App 59**
1980, from Petitioner, to 32A District Judge Roger LaRose asking for an adjournment of the then pending "Assault and Battery" "with plastic champagne glass," charges brought against Petitioner by the late Hamtramck Civil Service Commissions, Personnel Director, Sylvester M. Amejka.

A copy of a newspaper article, dated . . . . **App 61**
February 19, 1980, setting forth the background of the Assault and Battery/w/Plastic Champagne Glasses," charges and the reason for the January 2, 1980, visit to the Civil Service Commission, a request for documents, i.e., (A copy of Rule XII, Section 5, Cause For Removal or Reduction to compare with the Police Rules and Regulations).

A copy of a letter dated September 12, . . **App 64**
1996, to Petitioner, from the attorneys for the respondents stating that they were unable to locate his Hamtramck Civil Service Commission Personnel file, and/or certain specific documents, etc.

A copy of Page No. 29, of the June 30, . . **App 67**
1993, hearing held before since Wayne County Circuit Court Judge, Richard C. Kauffman, wherein the judge announced the so-called "Highland Park Pension Rule."

A copy of Page No. 30, of the above hearing wherein Judge Kauffman stated that the court had decided some "jurisdictional issues," and decided that he, Kauffman had "jurisdiction."

A copy of the Collective Bargaining. . . . . **App 68**
Agreement setting forth the standards for Pensions and Retirements, and Discipline, Article XI and XIII.

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CONSTITUTIONAL PROVISIONS AND STATUTES

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OPINIONS BELOW

1. Michigan Supreme Court Order dated May 31, 1996, denying application for leave to appeal as cross appellant, without a written opinion in conformance with Article No. 6, Section No. 6, of the Michigan Constitution of 1963 at Page No. 1 of the Appendix.

2. Michigan Supreme Court Order dated August 30, 1996, denying Motion for Reconsideration of the Court Order of May 31, 1996, without a written opinion in conformance with Article No. 6, Section No. 6, of the Michigan Constitution of 1963 at Page No. 2 of the Appendix.

3. A money order in payment for filing Motion for Stay on the Courts Order of August 30, 1996, to produce fabricated copy of Rule XII, Section 5, Cause For Discharge or Reduction; originally found by Petitioner on July 12, 1978, in the desk drawer of the officer of the in charge of *People v Percy Harris, Jr.,* 43 Mich App 746 (1973) and countersigned on that date by since deceased Detectives Joseph J. Harjay and Frederic W. James; and not found until September 21, 1996 at Page No. 3 of the Appendix.

4. Michigan Supreme Court's response to Petitioner's Motion For Stay of the Court's Order, dated August 30, 1996 at Page No. 4 of the Appendix.

5. Michigan Court of Appeals Order, Dated October 19, 1994 denying six (6) of Petitioner's motions at Page No. 6 of the Appendix.

6. Michigan Court of Appeals Order dated December 8, 1994 denying rehearing on seven (7) motions, and imposing a $200.00 fine for asking for rehearing at Page No. 8 of the Appendix.

7. Michigan Court of Appeals Order dated January 27, 1995, denying two (2) motions at Page No. 10 of the Appendix.

8. A copy of a letter dated November 14, 1995 notifying Petitioner that oral arguments would be held on theunauthorized May 2, 1994, brief of Petitioner's fired, former attorney Eleanor Cattron-Smith; and that only the Appellee would be allowed to present oral arguments at Page No. 11 of the Appendix.

9. A copy of the Michigan Supreme Court Docket Entries showing that Petitioner's Delayed Application to Appeeal the denial of Writ of Mandamus, No. 184844, was pending when the Court of Appeals rendered its January 26, 1996 unpublished opinion at Page No. 13 of the Appendix.

10. Michigan Court of Appeals Order dated March 18, 1996 denying three (3) motions at Page No. 15 of the Appendix.

11. Michigan Court of Appeals Order, dated April 18, 1996 denying one (1) motion at Page No. 16 of the Appendix.

12. Michigan Court of Appeals unpublished opinion dated January 26, 1996 at Page No. 17 of the Appendix.

JURISDICTION

That this matter is brought before this Honorable Court under 28 U.S.C. 1257 (1); 28 USC 1652; the 1st, 4th, 5th, 6th, and 14th Amendments of the United States Constitution.

The judgment and order, without an opinion, by the Michigan Supreme Court was entered on May 31, 1996 at Appendix No. 1. Petitioner's Motion For Rehearing, and/or Reconsideration was denied on August 30, 1996, at Appendix No. 2. This petition is filed within 90 days of the denial of rehearing. Jurisdiction of this Court to review the judgment in question through certiorari is conferred by 28 U.S.C. 1257 (a); 28 U.S.C. 1652 and also 28 U.S.C. 2403 (b) may apply, as well as the 1st, 4th, 5th, 6th, and 14th Amendments of the United States Constitution.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The pertinent portions of constitutional and statutory provisions involved in this case are:

1. Article No. I, Section No. 10, of the United States Constitution states in pertinent part as follows:

> "No state shall . . . . . ; pass any Bill . . , ex part facto Law, or law impair the Obligation of Contracts."

2. Article IV, Section No. 1, of same;

> "Section 1. Full faith and credit shall be given in each state to the public Acts, Records, and Judicial Proceedings of every other State. And the Congress may be general Laws prescribe the Manner in which such Acts, Records, and Proceedings shall be proved, and, the effect thereof."

BILL OF RIGHTS OF THE CONSTITUTION OF THE UNITED STATES

3. Article I;

Congress shall make no law . . . abridging the freedom of speech,"

4. Article IV;

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue, but upon probable cause; supported by oath or affirmation, and particularly describing the place to be searched, and the persons to be seized.

5. Article V;

"No person shall be . . . . deprived of life, liberty or property, without due process of law:"

6. Article VI;

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed . . . .to have compulsory process for obtaining witness in his favor."

7. Article IVX, Section No. 1;

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state drprive any person of life, liberty, or properly, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

8. 28 U.S.C. 1652. State laws as rules of decision.

"The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States in cases where they apply. (June 25, 1948, Ch. 646 § 62 Stat. 944). *Erie R. v Tompkins,* 304 U.S. 64, 58 s. cT. 817, 823 (1938).

9. 28 U.S.C. 1257 State Courts; certiorari.

"Final judgment or decrees rendered by the highest court of the State in which a decision may be had, may be serviced by the United States Supreme Court as follows:

(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being

repugnant to the Constitution, treaties or laws of laws of the United States, and the decision is in favor of its validity."

MICHIGAN CONSTITUTION OF 1963

10. Article No. 1, Section No. 2;

"Sec. 2. No person shall be denied the equal protection of the laws, nor shall any person be denied tne enjoyment of his civil or political rights or be discriminated against in the exercise thereof."

11. Article No. 1, Section No. 10;

"Sec. 10. No . . . . law inpairing the right of contract shall be enacted."

12. Article No. 1, Section No. 13;

"Sec. 13. A suitor or any court of this state has the right to prosecute or defend his suit either in his own property, person or by an attorney."

13. Article No. 1, Section No. 17;

"Sec. 17. No person shall be . . . deprived of life, liberty of property, without due process of law. The right of

all individuals, firms, corporations, and voluntary associations to fair and just treatment in the course of legislative, and executive investigations and hearings shall not be infringed."

14. Article No. 1, Section No. 19;

"Sec. 19. In all prosecutions for libels the truth may be given in evidence to the jury; and if it appears to the jury that the matter charged as libelous is true and was published with good motives and for good ends, the accused shall be acquitted."

15. Article No. 1, Section No. 20;

"Sec. 20. In every criminal prosecution, the accused shall have the right to a speedy and public trial by an impartial jury. . . to be confronted by witnesses against him; to have compulsory process for obtaining witnesses in his favor."

16. Article No. 6, Section No. 28;

"Sec. 28. All final decisions, findings, rulings and orders of any administrative officer or agency existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights or licenses, shall be subject to direct

review by the courts as provided by law. This review shall include, as a minimum, the determination whether such final decisions, findings, rulings and orders are authorized by law; and in cases in which a hearing is required, whether the same are supported by competent, material and substantial evidence on the whole record. Findings of fact in workmen's compensation proceedings shall be conclusive in the absence of fraud unless otherwise provided by law.

17. Article No. 9, Section No. 24;

"Sec. 24. The accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof which shall not be diminished or impaired thereby."

MICHIGAN STATUTES

18. MCL 38.514;

Sec. 14. (1) The tenure of each person holding an office, place, position or employment under * * * this act shall be only during good behavior and efficient service, and any * * * person may be removed or discharged, suspended without pay, and deprived of vacation privileges or other special privileges * * *

by the civil service commission * * * for incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment to the public, neglect of duty, a violation of * * * this act or of the rules of the commission, or for any other failure of good behavior, or for any other acts of misfeasance, malfeasance, or nonfeasance in office. However, a member of any fire or police department encompassed by this act shall not be removed, discharged, reduced in rank or pay, suspended, or otherwise punished except for cause, and in no event until he or she has been furnished with a written statement of the charges and the reasons for the actions. In addition all charges shall be void unless filed within 90 days after the date * * * the violation occurred."

19. MCL 38.556 (d) Section No. 6, Subparagraph No. 2;

(d) Vested retirement benefits; member leaving employment before eligible to retire, pension. A member who has 10 or more years of service shall have vested retirement benefits, not subject to forfeiture on account of disciplinary action, charges, or complaints. If the member leaves employment before the date the member would have first become eligible to retire as provided in

subparagraph (a), for any reason except the member's retirement or death, the member shall be entitled to a pension which shall begin the first day of the calendar month next following the month in which the member's written application for the pension is filed with the board, on or after the date the member would have been eligible to retire had the member continued in employment. The board shall grant the member the benefits to which the member is entitled under this act, unless the member resumes service, in which event the pension shall be further deferred with service years of credit until the member actually retires.

20. MCLA 750.539(c)

Sec. 539c. Any person who is present or who is not present during a private conversation and who wilfully uses any device to eavesdrop upon the conversation without the consent of all parties thereto, or who knowingly aids, employs or procures another person to do the same in violation of this section, is guilty of a felony punishable by imprisonment in a state prison for not more than 2 years or by a fine of not more than $2,000.0, or both.

21. MCLA 600.5855

Sec. 5855. If a person who is or may be liable for any claim fraudulently conceals the existence of the claim or the identity of any person who is liable for the claim from the knowledge of the person entitled to sue on the claim, the action may be commenced at any time within 2 years after the person who is entitled to bring the action discovers, or should have discovered, the existence of the claim or the identity of the person who is liable for the claim, although the action would otherwise be barred by the period of limitations.

22. MCLA 752.11

Sec. 1 Any public official, appointed or elected, who is responsible for enforcing or upholding any law of this state and who wilfully and knowingly fails to uphold or enforce the law with the result that any person's legal rights are denied is guilty of a misdemeanor.

23. MCLA 750.478

Sec. 478 WILFUL NEGLECT OF DUTY - When any duty is or shall be enjoined by law upon any public officer, or upon any person holding any public trust or employment, every wilful neglect to

perform such duty, where no special provision shall have been made for the punishment of such delinquency, shall be deemed a misdemeanor, punishable by imprisonment in the county jail for not more than 1 year or by a find of not more than 500 dollars.

STATEMENT OF THE CASE

1. That under **28 U.S.C. 1652, State Law,** except where the Constitution or treaties of the United States of Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States in cases where they apply. (June 25, 1948, Ch. 646, § 62 Stat. 944) **Article No.1, Section No. 10; Article No. 4, Section No. 1, U.S.C.A.**; and ***Erie R. Co. v Tompkins,* 304 U.S. 64, 58 S Ct. 817, 823 (1938), *West v AT& T,* 311 U.S. 223, 228-229 (1940).**

2. That the February 4, 1985, Federal Court Consent Judgment was unenforceable by the state court, because it sought to diminish Petitioner's vested pension benefit under **MCL 38.556 (d),** set at a rate of 100% of one (1/2) half pay under Chapter XIII, Section No. 4, of the Hamtramck City Charter, to 60% of one (1/2) half pay, ***Pontiac Police Officers Assoc. v City of Pontiac,* 397 Mich 674, 679 (1976); *Banish v City of Hamtramck,* 9 Mich App 381, 389-390 (1968); *Campbell v Judge's Retirement System,* 378 Mich 169, 183 (1966);** therefore both the federal and state court lacked **jurisdiction** or authority to enforce the provision of an illegal enterprise, no matter when it was obtained, ***Dearborn Township v Dearborn Township Clerk,* 334 Mich 673, 681; 55 NW2d 201 (1952);** but the enforcement of which by the Michigan Court of appeals was a denial of Petitioner's **due process** and **equal protection of the law;** guaranteed under both

Article No. 1, Section Nos. 1, 2, 17, and 20, of the Michigan Constitution of 1963, and the 1st, 5th, and 14th Amendments of the U.S.C.A.

3. That **Article No. 9, Section No. 24,** of the Michigan constitution of 1963, states as follows:

> **"Sec. 24. The accrued financial benefits of each pension plan of the state and its political subdivisions shall be a contractual obligation thereof which shall not be diminished or impaired thereof."**

Therefore, under **28 U.S.C. 1652**, the federal court lacked **jurisdiction** or **authority** to enter or enforce any consent judgment which diminished Petitioner's pension benefit from the rate of **100% of one (1/2) half pay set by Article XIII, Section No. 4,** of the Charter above, ***Banish*, supra,** which rendered the federal court action a denial of Petitioner's **due process** and **equal protection** of the law rights guaranteed under both **Article No. 1, Section Nos. 1, 2, 17, and 20,** of the Michigan Constitution of 1963, and the 5th and 14th Amendments of U.S.C.A.

4. That the trial court also created the so-called **"Highland Park Pension Rule"** (App 67) out of **"whole cloth"** and **"thin air"** in a deliberate attempt to prevent Petitioner from obtaining any meaningful recovery of retroactive pension benefits, **Brown v Highland Park, 320 Mich 108, 115 (1948),** overruled by Article No. 9, Section No. 24 of the Michigan Constitution of 1963 and ***Campbell*** supra, so that

Petitioner would not have the funds to hire a lawyer to force the disclosure of Petitioner's NSA-Minaret ---FBI-Cointelpro Subversive File No. (69)(1)(7)67-H and its direct connection to Judge Guy (App 49 & 50), ***Mooney v Holohan,* 294 U.S. 103, 113 55 S Ct. 340, 341, 79 L. Ed 791 (1935)**; ***Powell v Alabama* 287 U.S. 45, 58, (1932),** which was a denial of due process and the equal protection of the law under and the 14th Amendments of the U.S.C.A.

5. That the trial court **(Wayne County Circuit Court)** since retired judge **Richard Kauffman** was under an independent, affirmative, self-regulating duty to determine the limits of its jurisdiction to grant the Petitioner relief, ***Fox v Board of Regents,* 375 Mich 238, 242 (1965); *Paulson v Secretary of State 154 Mich App 626, 630-631 (1986); Assoc of Businesses Advocating Tariff Equity v Public Service Comm,* 192 Mich App 19, 480 NW2d 385 (1991);** and that court did, in fact, determine its **jurisdiction and authority** by improperly and illegally conferring with the two since retired Federal District Court Judges, **Ralph B. Guy, Jr., and George E. Woods, Jr.,** who had been involved in **Federal Civil Action No. 81-74095**, the forerunner of the instant case, about a material issue before the court, beyond the presence of Petitioner and his fired former attorney, Eleanor Cattron-Smith, (App. 68) **prejudiced** Petitioner's cause; and therefore denied Petitioner his 5th Amendment U.S.C.A. right to a fair hearing before an impartial magistrate, and his right to **due process** and the **equal protection of the law**

under both **Article No. 1, Section Nos. 1, 2, 17, and 20,**of the Michigan Constitution of 1963 and the 5th and 14th Amendments of the U.S.C.A.

6. That Respondents were limited to the thirteen (13) categories of offenses listed in **MCL 38.514** and Hamtramck Civil Service Commission Rule XII, Section No. 5, **Cause for Discharge or Reduction** Paragraph (a)-(t) for which Petitioner could be removed for cause, and **free speech** was not amongst the said offenses in the statute or the rules of the commission; therefore, Respondents lacked **jurisdiction** or **authority** to remove Petitioner from office, ***Carroll v Grand Rapids City Commission,* 265 Mich 51, 58 (1933); *Roberts v Jackson Civil Service Commission,* 75 Mich App 654-658 (1977); *Oliver v State Police* 132 Mich App 558, 568 (1984); *Ture v Ecorse City Council* 331 Mich 380, 387 (1951); *Garrity v New Jersey,* 385 U.S. 493, 500 (1966)** ;

7. That Petitioner's removal from office for the exercise of his right of free speech, referenced in (App 56) was constitutionally protected under both **Article No. 1, Section Nos. 1, 2, 5, 17 and 20** of the Michigan Constitution as well as the **1st, 5th, and 14th Amendments of the U.S.C.A.**, and was the denial of due process and the equal protection of the law, ***Pelarnowski v Brown,* 76 Mich App 666, 680 (1976); *New York Times v Sullivan,* 376 U.S. 54; 84 S. Ct. 710; 11 L. Ed2d 686 (1964).**

8. That Petitioner was denied the **equal protection of the law (MCL 38.514)** and due process under both

Article No. 1, Section Nos. 1, 2, 5, 17, and 20, of the Michigan Constitution of 1963, and the **1st, 5th, and 14th Amendments of the U.S.C.A.**, when he was removed from office upon **police charges** that were not amongst the thirteen (13) categories of offenses set forth in the statute, or one of the articulate rules of the Hamtramck Civil Service Commission set forth in **Rule XII, Section No. 5, Cause for Discharge or Reduction, Paragraph (a-t)** for which he could be removed from office; and therefore respondents lacked **jurisdiction** and **authority** to make said removal, ***Dullam v Wilson*, 53 Mich 392, 412-413 (1883), *Speed v Common Council* 98 Mich 380, 387 (1894); *Metevier v Therrien*, 80 Mich 187, 190-191; 194-196 (1890); *Bandfield v Wood*, 104 Mich App 279, 282 (1981).**

9. That Petitioner was denied the **equal protection of the law (MCL 38.514),** based upon Respondents own correspondence dated January 12, 1979 (App 52) that they were aware of the January 5, 7, 1979, media interviews, but did not bring any charges against Petitioner until May 18, 1979, beyond the statute of limitations for filing charges against a policeman or fireman under **MCL 38.514 *Solomon v Highland Park (CSC)* 47 Mich App 536, 540 (1973); *Goodridge v Ypsilanti Twp Bd; Command Officers Association of Michigan v Allen Park*, 451 Mich 446, 456 (1996);** therefore, respondents lacked **jurisdiction** or **authority** to remove Petitioner from office.

10. That Petitioner had an **absolute right** to act in his own proper person under **Article No. 1, Section No. 13,** of the Michigan Constitution and the 6th Amendment of the U.S.C.A., ***Ann Arbor Bank v Weber,*** **61 NW 2d 84 338 Mich 341 (1953; *Bocz v Hudson Motor Car Co.* 19 F Supp 385, 386 (1937).** Nevertheless, the Michigan Court of Appeals **refused** to accept his notice and affidavit dated **March 28, 1994** and **Motion For Peremptory Reversal and Remand** to the Federal District Court informing the court that he had terminated the services of his attorney, **Eleanor Cattron-Smith,** under **MRPC 1.16 (A)(3)(b)** and assumed the role of lead co-counsel; permitting Smith to continue to **"fraudulently"** act as Petitioner's counsel; and file the **May 2, 1994,** unauthorized brief, which is the factual basis of that court's **January 26, 1996** unpublished opinion.

11. That the refusal of the Michigan Court of Appeals to allow Petitioner access to the court, by initially refusing to accept his pleadings after proper notice to the court, attorney **Smith**, and Respondents; and then accepting the unauthorized brief of a fired attorney solely because she had been **"retained;"** perfunctorily denying all of Petitioner's pleadings including his attempts to strike Smith's **May 2, 1994, "unauthorized brief";** was a denial of **due process** and **equal protection of the law** under both **Article No. 1, Section Nos. 2, 13, 17 and 20,** of the Michigan Constitution of 1963, and the **5th and 14th Amendments** of the U.S.C.A.

12. That the refusal of the Michigan Court of Appeals to either bring the February 4, 1985 Federal Court Consent Judgment into line with the requirement of **MCL 38.556 (d)**; **Chapter 13, Section 4, of the Hamtramck City Charter;** and **Article No. 9, Section No. 24, of the Michigan Constitution of 1963** on the question of the 60% pension benefit, and/or remand the judgment back to federal court so that it could be brought into line with the state law; amounted to a denial of **due process** and the **equal protection of the law** under both **Article No. 1, Section Nos. 1, 2, 17, and 20**of the Michigan Constitution of 1963 and the **5th and 14th Amendments of the U.S.C.A.**

13. That under **Article No. 9, Section No. 24,** of the Michigan constitution of 1963, a pension benefit of the state and any of its political subdivisions was made a contractual right, therefore Petitioner as asserted under **MCL 38.556 (d)** had a vested pension benefit as of **May 14, 1976;** at the rate of one (1/2) half pay in **Chapter XIII, Section No. 4, of the Hamtramck City Charter;** not subject to forfeiture on account of disciplinary action, charges, or complaints; payable on the first day of the month, following the month that he would have first become eligible to retire had Petitioner remained on the police department **(December 28, 1985);** therefore, as a matter of law and of **contract** Petitioner was entitled to a full 100% of one (1/2) half pay pension benefit regardless of his removal from office, and enforceable in the state court under **Article No. 1, Section No. 10, of the Michigan Constitution of 1963** and **Article No. 1, Section No. 10** and **Article No. 4, Section No. 1,** of the U.S.C.A., ***Van Antwerp***

***v City of Detroit*, 47 Mich App 707, 717 (1973), *Shelby Twp Fire Dept. v. Shields*, 115 Mich App 98, 104-105 (1982).**

14. That under Petitioner's 1977-1979, Collective Bargaining Agreement, **Article XI**, states in part as follows:

> **"All police department personnel shall be subject to and entitled to pensions and retirements as provided in the Charter amendment (Chapter XIII, Section No. 4) adopted at the special election on November 8, 1938.**
>
> **The Charter amendment is incorporated by reference, provided, however, that any changes in the charter will be mutually discussed."**

Therefore, Petitioner was entitled to a full 100% of one (1/2) half pay pension benefit as a matter of contract, protected under both **Article No. 1, Section No. 10, of the Michigan Constitution of 1963** and **Article No. 1, Section No. 10,** and **Article No. 4, Section No. 1, of the U.S.C.A.**

15. That Petitioer's **1977-1979 Collective Bargaining Agreement, Article XIII,** contained an absolute prohibition against bringing charges against a policeman or fireman, in this case, on **May 18, 1979,** more than five (5) days after the date of the occurrence of the event **(January 5, 7, 1979, media**

interviews), some 131 days from the date of the occurrence to the date of the charges; therefore, when the Michigan Court of Appeals refused to enforce Petitioner's **right of contract** under **Article No. 1, Section No. 10, of the Michigan Constitution of 1963,** that court denied Petitioner **due process** and the **equal protection of the law;** under both **Article No. 1, Section Nos. 1. 2, 10, 17 and 20, of the Michigan Constitution of 1963; Article No. 1, Section No. 10 and Article No. 4, Section No. 1;** and the **5th and 14th Amendments of the U.S.C.A., *Plessy v Ferguson,* 163 US 537, 558, 4L Ed. 256 16 S. Ct. 1138, 1145 (1896).**

16. That under **MCL 24.306, Sec. 106,** Petitioner's removal from office was brought in violation of a statute **(MCL 38.514)** the ninety (90) day statute of limitations for filing of charges against a policeman or a fireman; **(Article XIII, of Petitioner's 1977-1979 Collective Bargaining Agreement)** the five (5) day rule for filing of such charges; **(MCL 38.514)** the Respondent's **lack of jurisdiction** and **authority** and legally sustainable charges under said statute, i.e., the thirteen (13) categories of offenses set forth in same, for which he could be removed for cause, and **Rule XII, Section No. 5, Cause For Discharge or Reduction, Paragraphs (a-t);** and Respondent's attempts to get two bites of the cherry, i.e., fire Petitioner without just cause, then totally humiliate him by diminishing his vested pension benefit of 100% of one (1/2) half pay as set forth in **Chapter XIII,Section No. 4 of the City Charter under Article No. 9, Section No. 24;** required the state court under **Article**

No. 6, Section No. 28, to bring the defective **February 4, 1985,** Federal Court Consent Judgment into line with state law, and/or remand same back to the Federal District Court where the judgment was rendered, ***Banish,* supra; *Bannan v Saginaw,* 420 Mich 376 388-389 (1984), *Justewicz v City of Hamtramck* 65 Mich App 555, 560-561 (1975); *Pitlock v Hamtramck (CSC)* 44 Mich App 410,413 (1973); *Rand v Civil Service Commission,* 71 Mich App 581, 586 (1976); *DeBeaussert v Shelby Twp,* 122 Mich App 128, 130 (1982); *AFSCME v Centerline* 414 Mich App 642, 655 (1982).**

17. That **Article No. 6, Section No. 6,** of the Michigan Constitution of 1963, states as follows:

> **Sec. No. 6: Decisions of the Supreme Court, including all decisions on perogative writs shall be in writing and shall contain a concise statement of the facts and reasons for each decision and reasons for each denial of leave to appeal. When a judge dissents in whole or in part he shall give in writing the reasons for his dissent.**
>
> **emphasis added,**

Therefore, the failure and refusal of the Michigan Supreme Court to give a written opinion giving fact based reasons for its denial of Petitioner's **Application For Leave To Appeal,** had denied him the right of a meaningful, judicial review thereby denying him **due process** and the **equal protection of the law** under **Article No. 1, Section Nos. 1,2, 17, and 20 of the**

Michigan Constitution of 1963 and the **5th and 14th Amendments of the U.S.C.A.**

18. That as to the question of whether Petitioner was **prejudiced** by the misconduct of the trial court, **18 U.S.C. 241 and 242,** he relies upon the transcript excerpt, App 68, as well as the facts and law set forth in Paragraph Nos. 19 through No. 24 of Petition For Certiorari, No. 96-522, with respect to Judge Ralph B. Guy Jr., and the continuing, federal and state judicially orchestrated cover-up of the NSA-Minaret —FBI– Cointelpro illegal electronic program directed against blacks; ***Griffin v Breckenridge,*** **403 US 101, 91 S. Ct. 1790, 29 L Ed. 338 (1971).**

19. That with respect to whether Petitioner is entitled to immediate reinstatement and back pay under **MCL 38.514** and **Article No. 6, Section No. 28,** of the Michigan Constitutin of 1963, Petitioner offers the following excerpt from **MCL 38.514;**

> **"At the hearing, the burden shall be upon the removing officer to justify his or her actions." - - - if the civil service commission fails to justify the action of the removing officer, then the person sought to be removed shall be reinstated with full pay for the entire period during which time he or she may have been prevented from performing his or her usual employment, and no charges shall be officially recorded against his or her record. A written record of all testimony taken at the hearing shall be kept and preserved by the civil service**

> **commission, which record shall be sealed and not be made available for public inspection if an appeal is not taken from the action of the commission.**

and, in the instant case, Respondents cannot cross petition or foreclose upon the question of its **jurisdiction, authority,** or **legally valid charges,** upon which Petitioner was removed from office, ***Gantz v City of Detroit*, 399 Mich 649, 652 (1973); *Shelby Twp v Shields* Mich App 115, 98, 104-105 (1982); *Tracer v Bushre* 381 Mich 282, 291 (1968); *Cook Coffee v Village of Flushing*, 267 Mich App 131, 134 (1934); *Goldstein v City of Hamtramck* 227 Mich, 263, 268 (1924);** and ***Griffin v Brekenridge* at 102, etc.,** which renders this matter for Peremptory Reversal on its face.

REASONS FOR GRANTING WRIT

1. That MCL 38.514, sets a ninety (90) day time limit wherein which charges must be brought against a police officer for discipline. The charges brought against Petitioner on May 18, 1979, were plainly beyond the ninety (90) day time limit from the date of the event January 5, 7, 1979, and were void.

2. That Petitioner's Collective Bargaining Agreement, Article XIII, sets forth a five (5) day time limit wherein charges must be brought against a Hamtramck Police Officer for discipline.

3. MCL 38.556 (D), Section No. 6, subparagraph No. 2, sets forth a ten (10) year minimum for a vested pension in the State of Michigan.

4. Article No. XIII, Section No. 4, of the Hamtramck City Charter sets the rate pensions for police and firemen at a flat rate of one-half (1/2) pay, with no provision for prorating same under any conditions.

5. Article No. 9, Section No. 24, of the Michigan Constitution of 1963, made the pension benefit of the state or any of its political subdivisions a contractually right, that cannot be diminished or otherwise impaired.

6. That under the Rules of Decision in Civil Cases in the United States Courts, state law is binding under Section No. 34, of the Federal Judiciary Act of 1789, and 28 U.S.C. 1652, *Erie R. Co. v Tompkins,* 304 U.S. 78 therefore the February 4, 1985, Consent Judgment in violation of the state law and illegal on its face.

7. That the Michigan Supreme Court has treated Petitioner differently than a white policeman and a white fireman; *Command Officers Association of MI v City of Allen Park,* and *Goodridge v Ypsilanti Twp,* 451 Mich 446, 456 (1996). The decision was a sham, a cheap trick and gross canard; Kenneth Dobson never lost a paycheck, and is now deputy chief of that city; and Jerry Goodridge's falls squarely within the discovery rule of *Solomon* at 540. The

scam was an attempt to evade the condemnation of *Griffin* at 102.

CONCLUSION

That the May 31, 1996, Order, denying Leave To Appeal as cross-appellant by the Michigan Supreme Court and the August 30, 1996 order denying rehearing are simply part of a continuum of a judicially orchestrated cover-up; first initiated by since retired Sixth (6th) Circuit of Appeals Judge Ralph B. Guy Jr.,on June 14, 1976. Then an attempt to continue it by since retired Michigan Court of Appeals Judge Michael J. Connor on June 21, 1994.

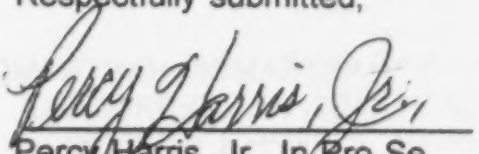
The objective of the cover-up has at all times been three-fold, prevent discovery and disclosure of the root cause (NSA---Minaret ---FBI -- Cointelpro Subversive File No. 691767H) Michigan Attorney General - Michigan State Police Red Squad Subversive File No. 9732604, fabricated when released to Petitioner to conceal the FBI connection, to read No. 0732604, instigated the bad faith criminal prosecution in *People v Percy Harris, Jr.* 43 Mich App 746 (1972); prevent Petitioner from obtaining any meaningful recovery of damages, and to protect the judicial reputations of then Judges Guy, Connor,

Michigan Court of Appeals Judge Roman Gribbs; Michigan Supreme Court Justice, Patricia Boyle, who was the appellate prosecutor in Petitioner's criminal case; Mrs. Boyle's husband, Terrence K. Boyle, who was the county grand jury prosecutor during the 1969-1970 time frame; and Chief Justice, James Brickley, who was Assistant United States Attorney for the Eastern District of Michigan and Guy's immediate supervisor during the indictments of the Plamondon and Weathermen defendants, 18 U.S.C. 2511 (a)(c)(d); 18 U.S.C. 2518 (8)(9); 18 U.S.C. 2520 (a)(b); MCLA 750.539; MSA 28.807; *Young v Young*, 211 Mich App 446, 448-449 (1985); *United States v Alderman,* 394 U.S. 165, 185 (1969); *Hampton* at 610, Paragraph No. 2, etc.

Factually different, but directly analoguous to the instant case, is *Young v Young*, supra, the State Court of Appeals allowed a white female litigant to recover damages against her former husband for interspousal wire-tapping under the federal statute; but denies Petitioner the right to have the documentary evidence of the Federal Government's illegal electronic interception of his private telephone conversation found in the State Red Squad Subversive File certified to the court under Article VI, Section No. 28 of the Michigan Constitution of 1963, *Justewicz* at 560-561, so that he cannot prove his claim for damages against both the federal and state governments.

The cover-up of NSA--Minaret--FBI--Cointelpro program by both state and federal officials is precisely the reasons why Elmer "Geronimo" Pratt, Abu Mumi Jamal, and Leonard Peltier cannot get a new trial. To expose the fact that all three individuals and Petitioner were victims of the illegal electronic interception program would expose both the federal and state governments to horrendous money damage awards under 42 U.S.C. 1985 (2 & 3) with respect to criminal justice agents using said information while simultaneously concealing it from the defendants in both state and criminal prosecutions. The Petitioner was prosecuted three times on criminal charges and luckily was acquitted. In essence, this is an American Dreyfuss case.

Respectfully submitted,



Percy Harris, Jr., In Pro Se
P.O. Box 14231
Detroit, Michigan 48214
1-810-968-8362
1-313-267-6227

Dated: November 27, 1996

c:\legal\cic.1

APP 1

ORDER

Entered: May 31, 1996Michigan Supreme Court

Lansing, Michigan

James H. Brickley
Chief Justice

106003 & (151)

Charles L. Levin
Michael F. Cavanagh
Patricia J. Boyle
Dorothy Comstock Riley
Conrad L. Mallett, Jr.
Elizabeth A. Weaver
Justices

PERCY HARRIS, JR.,
Plaintiff-Appellant,

SC: 106003
COA: 166601
LC: 93-302439-AW

V

CITY OF HAMTRAMCK, HAMTRAMCK CITY COUNCIL; MICHAEL ZEBROWSKI, Controller, JOSEPH J. GRZECKI, Treasurer,
Defendants-Appellees.

On order of the Court, the application for leave to appeal and application for leave to appeal as cross-appellant are considered, and they are DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

60528

SEAL
Seal of the Michigan
Supreme Court, Lansing

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

s/s May 31, 19s/s96 **s/s Corbin R. Davis**

Clerk

ORDER
Entered: August 30, 1996

Michigan Supreme Court
Lansing, Michigan
James H. Brickley
Chief Justice

106003 & (151)(157)

Charles L. Levin
Michael F. Cavanagh
Patricia J. Boyle
Dorothy Comstock Riley
Conrad L. Mallett, Jr.
Elizabeth A. Weaver
Justices

PERCY HARRIS, JR.,
Plaintiff-Appellant,

SC: 106003
COA: 166601
LC: 93-302439-AW

V

CITY OF HAMTRAMCK, HAMTRAMCK CITY COUNCIL; MICHAEL ZEBROWSKI, Controller, JOSEPH J. GRZECKI, Treasurer,
Defendants-Appellees.

On order of the Court, the motion for reconsideration of this Court's order of May 31, 1996 is considered, and it is DENIED, because it does not appear that the order was entered erroneously. The motion for disqualification of Justices is also considered, and it is DENIED.

30827

SEAL
Seal of the Michigan
Supreme Court, Lansing

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.
s/sAugust 30 19s/s96 **s/sCorbin R. Davis**
Clerk

(SEAL)
MONEY ORDER

804150843

(SEAL)
COMERICA
Comerica Bank
Detroit, Michigan 48275

Date: 9/16/94

MEMO _____
Pay
To The
Order of **s/s State of Michigan**

$ **$50.00**

s/s* 50 DOLLARS AND 00 CENTS***

Authorized Signature
Signature s/s Svetlana Zikhermann of Purchaser s/s Percy Harris Jr.
00007/05901
"72009" :102000018:8 231623 804150843"

(SEAL)
Michigan Supreme Court
Lansing, Michigan 48909

James H. Brickley
Chief Justice

September 18, 1996

Charles L. Levin
Michael F.Cavanagh
Patricia J. Boyle
Dorothy Comstock Riley
Conrad L. Mallet, Jr
Elizabeth A.Weaver
Justices

Corbin R. Davis
Clerk

Mr. Percy Harris, Jr.
P.O. Box 14231
Detroit, MI48214

Re: Percy v City of Hamtramck, No. 106003

Mr. Harris:

Your "MOTION FOR STAY ON THE COURT'S ORDER", received by this office September 16, 1996, is

herewith returned (together with your money order in the amount of $50) for the reason that the Court Rules do not permit successive motions for reconsideration. It appears that your motion is an attempt to reargue the matters disposed of by this Court's disposition in your application and your previous motion for reconsideration.

APP 40

I note, also, that you request extension of the time for filing in the Supreme Court of the United States. You should be advised that this Court has no jurisdiction to enter an order granting such relief. The time for filing in the U.S. Supreme Court is governed by the rules of the court and the time runs from the date of the denial of our motion for reconsideration.

Very truly yours,

s/s Corbin R. Davis
CORBIN R. DAVIS
Clerk

CRD/kc
Enclosures

COURT OF APPEALS, STATE OF MICHIGAN

O R D E R

Roman S. Gribbs
Presiding Judge

Percy Harris v MERS
Docket # 166601

Harold Hood

L.C. # 93-302439 AW

Maura D. Corrigan
Judges

The Court orders that appellant's motion for relief from error is **DENIED.**

The Court further orders that appellant's motion for peremptory reversal pursuant to **MCR 7.211 (C)(4)** is **DENIED** for failure to persuade the Court of the existence of manifestly reversible error warranting peremptory relief without argument or formal submission.

The Court further orders that appellant's motion to remand is **DENIED** for failure to persuade the Court of the necessity of a remand at this time.

The Court further orders that appellant's motion to strike various pleadings filed by his former counsel and by opposing counsel is **DENIED.** Appellant shall have 28 days from the Clerk's certification of this order to file a supplemental brief, and appellee shall have 28 days from service of that supplemental brief to file a responsive brief.

The Court further orders that appellant's motion for summary disposition is **DENIED,** such relief being unavailable in matters on appeal to this Court. Appellate motion practice is set forth in MCR 7.211, and that rule supercedes the provisions of MCR 2.116. See MCR 2.100 regarding the applicability of that subchapter to the courts of Michigan.

The Court finally orders that appellee's motion for sanctions is **DENIED** without prejudice.

(SEAL)
STATE OF MICHIGAN
COURT OF APPEALS

A true copy entered and certified by Ella Williams, Chief Clerk, on

S/S October 19, 1994 **s/s Ella Williams**
Date **Chief Clerk**

COURT OF APPEALS, STATE OF MICHIGAN

O R D E R

Roman S. Gribbs
Presiding Judge

Percy Harris v MERS
Docket # 166601

Harold Hood

L.C. # 93-302439 AW

Maura D. Corrigan
Judges

The Court orders that the motion to strike is **DENIED.**

(SEAL)
STATE OF MICHIGAN
COURT OF APPEALS
A true copy entered and certified by Ella Williams, Chief Clerk, on
S/S October 19, 1994 **s/s Ella Williams**
Date **Chief Clerk**

COURT OF APPEALS, STATE OF MICHIGAN

O R D E R

Roman S. Gribbs
Presiding Judge

Percy Harris v MERS
Docket # 166601

Harold Hood

L.C. # 93-302439 AW

Maura D. Corrigan
Judges

The Court orders that the motion for publication of an opinion in support of this Court's order of October 19, 1994, is **DENIED.** MCR 7.211 (E) provides for the issuance of orders in resolutio of motions filed before this Court. A published written opinion is neither required by the rules which govern the Court of Appeals, nor is one necessitated by the issues presented for review.

The Court further orders that the motion for rehearing of this Court's order of October 19, 1994, denying appellant's motion for relief from error is **DENIED.**

The Court further orders that the motion for rehearing of this Court's order of October 19, 1994, denying appellant's motion for peremptory reversal is **DENIED.**

The Court further orders that the motion for rehearing of this Court's order of October 19, 1994, denying appellant's motion for remand is **DENIED.**

The Court further orders that the motion for reharing of this Court's order of October 19, 1994, denying appellant's motion to strike the brief on appeal filed May 2, 1994, is **DENIED.** Appellant shall have 28 days from the Clerk's certification of this order to file a supplemental brief on the merits of this appeal and appellee shall have 28 days from service of that supplemental brief to file a responsive brief.

The Court further orders that the motion for rehearing of this Court's order of October 19, 1994, denying appellant's motion for summary disposition is **DENIED.**

The Court further orders that the motion for rehearing of this Court's order of October 19, 1994, denying appellant's motion to strike the response to the motion for summary disposition is **DENIED.**

The Court finally orders, on its own motion, that appellant Percy Harris is assessed $200 cost for the additional work incurred by this Court in processing these motions. Such costs are payable to the Clerk of the Court within 14 days of the Clerk's certification of this order.

(SEAL)
STATE OF MICHIGAN
COURT OF APPEALS

A true copy entered and certified by Ella Williams, Chief Clerk, on
S/S December 8, 1994 **s/s Ella Williams**
Date **Chief Clerk**

COURT OF APPEALS, STATE OF MICHIGAN

O R D E R

Myron H. Wahls
Presiding Judge

Percy Harris v Mers
Docket # 166601

Harold Hood
Helene N. White

L.C. # 93-302439 AW

Judges

The Court orders that the motion for stay of appellate proceedings is **DENIED.**

The Court further orders that the motion for relief from judgment is **DENIED.**

(SEAL)
STATE OF MICHIGAN
COURT OF APPEALS

A true copy entered and certified by Ella Williams, Chief Clerk, on

S/S January 27, 1995 **s/s Ella Williams**
Date **Chief Clerk**

MARTIN M. DOCTOROFF
CHIEF JUDGE
WILLIAM B. MURPHY
CHIEF JUDGE PRO TEM
DONALD E. HOLBROOK, JR.
MICHAEL J. KELLY
BARBARA S. MACKENZIE
MYRON H. WAHLS
HAROLD HOOD
ROMAN S. GRIBBS
DAVID H. SAWYER
GARY R. MCDONALD
MARK J. CAVANAGH
RICHARD ALLEN GRIFFIN
MARILYN KELLY
JANET T. NEFF

MAUREEN PULTE REILLY
KATHLEEN JANSEN
E. THOMAS FITZGERALD
MICHAEL J. CONNOR
CLIFFORD W. TAYLOR
MAURA D. CORRIGAN
HELENE N. WHITE
HENRY WILLIAM SAAD
RICHARD A. BADSTRA
JOEL P. HOEKSTRA
JANE E. MARKEY
STEPHEN J. MARKMAN
PETER D. O'CONNELL
MICHAEL R. SMOLENSKI
JUDGES
ELLA WILLIAMS
CHIEF CLERK

(S E A L)

STATE OF MICHIGAN

COURT OF APPEALS

November 14, 1995

HARRIS PERCY
P.O. BOX 14231
DETROIT, MI 48214 0000

PANEL: M J KELLY
M P REILLY
SOSNICK EDWARD

RE: ITEM NO. 6 PERCY HARRIS V MERS

APP 12

Dear Counsel:

Please be advised that the above captioned appeal will be submitted to the court for a decision in our courtroom at the DETROIT address on the date and time specified below.

All motions relating to the calendar must be filed no later than NOVEMBER 28, 1995.

Cases will be called in the sequence listed below. You are not endorsed for oral arguments.

Yours very truly,

ELLA WILLIAMS
Chief Clerk

December 05, 1995 - 10:00 A.M. at DETROIT ARGUMENT

1. 183735 PEOPLE OF MI V ERICK VINCENT BROWN
APPELLANT
2. 183892 PEOPLE OF MI V JOHN ROBERT ABRAHAM
APPELLANT
3. 181665 PEOPLE OF MI V BOYD M HOWE
APPELLANT
4. 184385 PEOPLE OF MI V IRA JUNIOR HAMILTON
APPELLANT
5. 163179 PURINA MILLS INC V SECURITY BANK & TRUST
BOTH SIDES
5. 166948 RONALD D. HARMON V PAUL BAUERS
BOTH SIDES
6. 166601 PERCY HARRIS V MERS APPELLEE

7. 169554 EARL F. COKER V KAREN CARTWRIGHT
APPELLANT
8. 179380 IN RE ELEANOR EHRESMAN APPELLEE

DETROIT OFFICE
900 FIRST FEDERAL BLD.
DETROIT, MICHIGAN 48226
(313)256-9212

LANSING OFFICE
109 WEST MICH. AVE.
P.O. BOX 30022
LANSING, MI 48909

GRAND RAPIDS OFFICE
350 OTTAWA N.W.
GRAND RAPIDS, MI 49503
(616)456-1167
(517)373-0786

MICHIGAN SUPREME COURT
CERTIFIED DOCKET ENTRIES
Docket Number 103772

	Plaintiff Atty	**Defendant Atty**
Percy Harris, Plaintiff-Appellant	Pro Per P.O. Box 14231 Detroit, MI 48214	
v 103772		
City of Hamtramck, et al. Defendant-Appellee,		Lawrence Paolucci 20480 Vernier Rd. Harper Wds., MI 48225

Court of Appeals #184844
Wayne County Circuit Court #93-302439-AW

DATE **PROCEEDINGS**

1995

Jul 25	Delayed Application for Leave to Appeal filed.
Aug 25	Brief in Opposition filed.
Sep 12	Reply by appellant filed.
" 14	Miscellaneous filing by appellant (missing exhibits to Reply filed).

STATE OF MICHIGAN --SS

I. Corbin R. Davis, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of the docket entries in this cause; that I have compared the same with the original and that this is a true transcript and whole thereof.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this twenty-first day of November in the year of our Lord one thousand nine hundred and ninety-five.

s/s Corbin R. Davis **Clerk.**

COURT OF APPEALS, STATE OF MICHIGAN

O R D E R

MICHAEL J. KELLY
Presiding Judge

Percy Harris v Mers
Docket # 166601

MAUREEN P. REILLY
EDWARD SOSNICK

L.C. # 93-302439 AW

Judges

The Court orders that the motion for rehearing of order of January 9, 1996 is **DENIED.**

The motion to strike appellant's brief filed May 2, 1994 is **DENIED.**

The motion for rehearing of opinion is **DENIED.**

(SEAL)
STATE OF MICHIGAN
COURT OF APPEALS

A true copy entered and certified by Ella Williams, Chief Clerk, on
S/S Mar 18, 1996 s/s Ella Williams
Date **Chief Clerk**

COURT OF APPEALS, STATE OF MICHIGAN

ORDER

MICHAEL J. KELLY
Presiding Judge

Percy Harris v Mers
Docket # 166601

MAUREEN P. REILLY
EDWARD SOSNICK

L.C. # 93-302439 AW

Judges

The Court orders that the amended motion for rehearing is **DENIED.**

(SEAL)
STATE OF MICHIGAN
COURT OF APPEALS

A true copy entered and certified by Ella Williams, Chief Clerk, on
S/S Apr 18, 1996 **s/s Ella Williams**
Date **Chief Clerk**

STATE OF MICHIGAN

COURT OF APPEALS

PERCY HARRIS,
Plaintiff-Appellant

UNPUBLISHED
January 26, 1996

v

No. 166601
LC No. 93 3032439 AW

CITY OF HAMTRAMCK, HAMTRAMCK CITY COUNCIL, MICHAEL ZEBROWSKI and JOSEPH BREZCKI,
Defendants-Appellees.

Before: M. J. Kelly, P. J., and Reilly and E. Sosnick, *JJ

PER CURIAM.

Plaintiff appeals as of right circuit court orders granting in part and denying in part his request for a writ of mandamus in his action to obtain pension benefits from defendant City of Hamtramck as awarded in a consent judgment. We reverse in part and remand for modification of the orders consistent with this opinion.

Plaintiff was employed by the city as a member of the police force beginning November 28, 1965, and ending with his discharge in 1979. On November 5, 1981, plaintiff filed a civil rights action against the city, and its police department, civil service commission and

employees in the United States District Court, Eastern district of Michigan. The parties entered into a consent judgment which was signed by the court and filed on February 4, 1985. The judgment provided in part that plaintiff "shall receive" sixty percent of his pension benefits upon the 20th anniversay of his date of hire. The judgment also requird that the parties draft and execute releases for all claims as of the date the judgment was entered. However, plaintiff did not execute a release as of that date.

On March 7, 1985, the city's Common Council adopted a resolution that incorporated the terms of the consent judgment and included the above provision verbatim. The resolution also authorized the city controller to issue checks satisfying the portion of the judgment pertaining to plaintiff's attorney fees.

After the judgment was entered, plaintiff discharged his attorney and filed a motion in the federal district court in which he sought to have the consent judgment set aside. On Marcy 7, 1985, the district court denied plaintiff's motion. Plaintiff appealed to the Sixth Circuit. The appeal was dismissed for want of prosecution in an order filed October 10, 1985. Plaintiff's efforts to have the consent judgment vacated continued as late as May, 1990, when he wrote to the city attorney and asserted that the consent judgment was "technically and substantively flawed [and] in direct violation of the specific rules and regulations governing pension funds and benefit plans in Chapter XIII of the Hamtramck City Charter ....", unenforceable by the court" and "null and

void." The city responded that upon plaintiff's "executing a mutual release and upon application for pension benefits, the City will commence payment of 60 percent of your pension effective May, 1990, the month you made your initial request."

---

*Circuit Court judge sitting on the Court of Appeals by assignment.

In a letter dated August 11, 1992, plaintiff's new counsel advised the city that plaintiff wanted payment pursuant to the consent judgment to begin immediately. He also requested back pension payments with appropriate interest and health insurance coverage. The city responded that it "would not be forwarding anything" to plaintiff unless he signed and returned a release that had previously been provided by the city. On October 22, 1992, plaintiff's counsel replid that the release was overbroad and proposed a revised release.

On January 26, 1993, plaintiff filed this action in circuit court seeking a writ of mandamus and an accounting. Plaintiff asserted that "[d]efendants have a clear legal duty to commence payments from their pensin fund pursuant to the judgment," and that "[t]he judgment requires that installments on Plaintiff's pension should commence on the 20th anniversary date of his hire." He sought "an accounting of the pension rates and underlying calculations so that he can ascertain the correct amount of the arrearage" and an acounting of the interest accrued on the judgment.

Defendants moved for summary disposition pursuant to MCR 2.116 (C)(10).1 They argued that there was no genuine issue of material fact in dispute because "Plaintiff is not entitled to his pension benefits without first executing a release and further formally applying for pension benefits" pursuant to provisions of the city charter. The court ruled:

> As far as the release goes, I think the release was an independent right of the defendant to have all other claims release[d]. They had that right they could have brought their own matter and they can still bring their own motion forcing Mr. Harris to sign a release. That did not in any way in this Court's mind affect his pension.
>
> At the same time the Court believes it's clear from the consent judgment [sic] that Mr. Harris had no right to receive his pension until he complied with the rules of the pension fund. One of those being you have to file an application. So my ruling is, from the date that he first filed a proper application, he is entitiled to his pension benefits.

The court did not decide when Plaintiff had filed a proper application, but instead invited the parties to bring another motion if a dispute as to that date arose.

Ultimately, the court enterd an order on June 30, 1993, providing that plaintiff applied for pension benefits on August 11, 1992, in a letter from his counsel; that plaintiff is entitled to pension benefits beginning September, 1992, the month following the date of his application; and that plaintiff be paid "statutory interest

at the rate of 6.97% on any retroactive payments from September, 1992 through and including June of 1993 from the date of the filing of the within complaint, January 26, 1993 through the date of payment."

The focal point of the litigation is whether plaintiff's right to collect pension benefits pursuant to the consent judgment is contingent upon his formal application for benefits. The consent judgment provides in pertinent part:

IT IS HEREBY ORDERED that upon the 20th anniversary of his date of hire with the City of Hamtramck Police Department, Plaintiff, Percy Harris, Jr. shall receive from the pension and benefit plans maintained by and for the City of Hamtramck and its employees 60 percent of the pension benefits to which he would have been entitled had he remained in the employ of the City of Hamtramck until said anniversary date. These payments shall be made regularly and in accordance with the rules otherwise governing said pension funds and benefit plans so long as Plaintiff Percy Harris, Jr. so shall live.

Plaintiff Percy Harris, Jr. shall not be required to make any further contribution to said pension benefit funds and plans. [Emphasis added.]

Plaintiff, relying on MCL 600.6093 (1); MSA 27A 6093 (1), commends that the city had a duty to set aside funds for satisfaction of the judgment. Defendants contend that the second passage underscored above "acts as a condition precedent, which must be met before the pension would be paid." According to

defendant, plaintiff's right to payment is contingent upon his compliance with the "rules otherwise governing said pension and benefit plans," as found in the City Charter, specifically, his formal application for a pension.

We agree with plaintiff that the trial court incorrectly determined the date when he was entitled to benefits according to the consent judgment. contrary to defendants' argument, the language of the judgment did not make defendant's obligation to pay contingent on plaintiff's application. The consent judgment states that plaintiff "shall receive" the benefits "upon the 20th anniversary of his date of hire." This language imposed an unconditional obligation on the part of the city to being paying the benefits on November 28, 1985. Had the parties intended to impose conditions on the obligation, they would have used the words reflecting the condition, e.g. "shall be eligible to receive," rather than "shall receive."

We reject defendants' argument that obligation to pay was made contingent by the statement, "These payments shall be made in accordance with the rules otherwise governing said pension funds . . ." this statement further imposes an obligation on the part of the city to make the necessary payments and does not indicate that plaintiff was required to take action to trigger the city's obligation to pay. Furthermore, the inclusion of the work "otherwise" in the statement "the rules otherwise governing said pension funds" indicates that the drafters did not intend for the rules to supercede the obligation previously set forth.

The parties agree that a writ of mandamus is an appropriate remedy to enforce a clear legal duty of a municipality to pay retirement benefits. Once the judgment was entered, defendants' obligations to take the necessary steps to satisfy the judgment became a mere ministerial duty. *Zelenka v Wayne County Corp Counsel,* 143 Mich App 567, 573; 372 NW2d 356 (1985). Therefore, the trial court's order partially granting and partially denying mandamus is reversed to the extend that the payments are retroactive only to September 1992, rather than November 28, 1985, the twentieth anniversary of plaintiff's date of hire.

Plaintiff also argues that the consent judgment was "based upon a false assumption," "the result of an apparent oversight on the part of the drafter," and that he "did not make a knowing, intentional or valid waiver of his right to 100% of his benefits." These arguments are not properly before us because they were not properly raised before the circuit court. The present action is a complaint for mandamus and an accounting, not an action to set aside the judgment. Furthermore, to the extent that these arguments were raised in plaintiff's motion to set aside the judgment and were rejected by the federal district court judge on the merits, res judicata bars relitigation. See *Schwartz v Flint,* 187 Mich App 191, 194-195; 466 NW2d 357 (1991).

Plaintiff also contends that the trial court incorrectly determined the amount of interest to which he was entitled. According to plaintiff, he has a statutory right to interest on the retroactive pay beginning on the date that he filed the complaint in the civil rights action that culminated in the consent judgment. We disagree.

When he agreed to the consent judgment, he waived his rights to prejudgment interest on the amount of the judgment. *Freysinger v Taylor Supply Co,* 197 Mich App 349, 351; 494 NW2d 870 (1992). However, consistent with our conclusion on the first issue, to the extent that the circuit court's order awards interest only on the pension benefits beginning September 1992, the order is reversed. Plaintiff is entitled to interest on the unpaid benefits to which plaintiff was entitled pursuant to

the consent judgment beginning on November 28, 1985, from the date the complaint in the present action was filed until paid. MCL 600.6013(5); MSA 27A.6013(5).

Reversed in part and remanded for modification of the orders consistent with this opinion. We do not retain jurisdiction.

/s/ Michael J. Kelly
/s/ Maureen P. Reilly
/s/ Edward Sosnick

1 Defendants also moved for summary disposition pursuant to MCR 2.116 (C)(4) asserting that the court lacked subject matter jurisdiction because the proper court to interpret the judgment is the court in which it was entered, e.g. the United States District Court for the Eastern District of Michigan. The court rejected this argument and defendants have not cross-appealed on the basis of this ruling.

38.514. Removal or suspension; charges; hearing; appeal; reductions in force

Sec. 14. (1) The tenure of each person holding an office, place, position, or employment under * * * this act shall be only during good behavior and efficient service, and any * * * person may be removed or discharged, suspended without pay, and deprived of vacation privileges or other special privileges * * * by the civil service commission * * * for incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment to the public, neglect of duty, a violation of * * * this act or of the rules of the commission, or for any other failure of good behavior, or for any other acts of misfeasance, malfeasance, or nonfeasance in office. However, a member of any fire or police department encompassed by this act shall not be removed, discharged, reduced in rank or pay, suspended, or otherwise punished except for cause, and in no event until he or she has been furnished with a written statement of the charges and the reasons for the actions. In addition, all charges shall be void unless filed within 90 days after the date * * * the violation occurred.

RULE XII - TERMINATION OF SERVICES

Section 1. RESIGNATIONS:

If any employee resignes from the Classified Service (Class "B" & "C", inclusive), without giving the required 15 day notice, or such notice that is satisfactory to the Appointing Authority, he shall be held as not having resigned in good standing and such fact shall be reported to the Personnel Director and entered as a part of the employee's record.

Section 2. WITHDRAWAL OF RESIGNATIONS:

Any employee who has resigned in good standing, may within six (6) months after the effective date of his resignation, withdraw such resignation with the approval of the Civil Service Commission and the Appointing Authority under whose jurisdiction he was employed and be restored to the position if it is still vacant, or filled by a temporary employee.

Section 3. STATUS OF RESIGNED EMPLOYEE WHEN POSITION IS FILLED:

(a) If the position which he vacated has been discontinued, or is filled by permanent employee, or if the withdrawal of his resignation is approved and he is not restored to his former position or appointed to another position in the class, his name shall be placed on the Re-employment List for the class, as of the date of the withdrawal,

and will be eligible for re-employment within two (2) years thereafter when vacancies in the class occur. (C.S.A. Section 25)

RULE XII - TERMINATION OF SERVICE

Section 3 - STATUS OF RESIGNED EMPLOYEE WHEN POSITION IS FILLED:

(b) If there is more than one vacancy in classification in proper grade and unit, the person to be reinstated may have preference of vacancies.

(c) The person to be reinstated must meet the qualifications of the job (classification).

(d) All "Class C" reinstatmenets are to be based on the Unit System as specified in Local #666 Union Contract, as amended.

(e) Persons returning to employment from Re-employment List shall be requried to pass medical examination by City Physician prior to approval of re-instatement.

(f) Persons who return to employment from the Re-employment List shall start at the second step of the Salary Structure.

Section 4. LAYOFFS

When it becomes necessary in any department, through lack of work or funds or other causes, to reduce the number of employees, all emergency, temporary, provisional and seasonal employees, if any, shall be laid off first and in the order named; and thereafter, in the order of seniority in the department.

(C.S.A. Section 27)

Section 5. CAUSE FOR DISCHARGE OR REDUCTION:

The following are declared to be cause for removal or discharge from the Classified Service (Class "B" & "C", inclusive) of the City of Hamtramck, though charges may be based upon causes other than those enumerated; viz., that any officer or employee who:

(a) Has been convicted of a criminal offense or of a misdemeanor involving moral turpitude; or

(b) Has been guilty of an immoral or criminal act:

(1) but if such act is, at the time the charge is being considered, involved in a criminal proceeding before the Grand Jury or the courts, the officer or employee so charged may request that the investigation be postponed or continued, with the consent, until such time as the criminal proceedings are terminated, and such request shall be granted;

(2) provided, the officer or employee shall be suspended from duty during such postponement, and, provided, he shall execute a waiver of all right to pay during said postponement period;

(3) and provided further, that such officer or employee may have the hearing or investigation proceed at any time on 10 (ten) days' notice in writing; or

RULE XII - TERMINATION OF SERVICES

Section 5- CAUSE FOR DISCHARGE OR REDUCTION:

(c) Has willfully, wantonly, or through culpable negligence been guilty of brutality or cruelty to an inmate or prisoner of a City institution or to a person in custory; provided, the act committed was not necessarily or lawfully done in self-defense, or to protect the lives of others, or to prevent the escape of a person lawfully in custody accused of felony or gross misdemeanor; or

(d) Has willfully violated any of the provisions of the City Civil Service Law or the rules made in pursuance thereof; or

(e) Has been guilty of conduct unbecoming an officer or employee of the City; or

(f) Has violated any lawful and reasonable official regulation of the department, or failed to obey any lawful and reasonable direction given by his superior officer, where such violation or failure to obey amounts to an act of insubordination, or to a serious breach of proper discipline, or resulted or reasonably might be expected to result in loss or injury to the City or to the public or to the prisoners or wards of the City; or;

(g) Has been intoxicated while on duty; or

(h) Has contacted some infectious disease or has some physical ailment or defect which permanently incapacitates him for the proper performance of the duites of his position; or

(i) Has been guilty of an act which amounts to an act of insubordination or to disgraceful conduct, whether such acts were committed while on duty of off duty; or

(j) Is wantonly offensive in his conduct or language toward the public or toward City officers or employees; or

(k) That he has solicited the vote of a member of the City Council for or against a proposed

ordinance or resolution, or a proposed item in a budget or an appropriation ordinance concerning his department, where such solicitation is charged and established to have been made elsewhere than at a Public Hearing of the City Council or of some committee thereof; or

(l) that he is incompetent or inefficient in the performance of the duties of his position, (specific instances to be charged); or

(m) that he is careless or negligent of the property of the City; or

(n) Has failed to pay or make reasonable provision for future payment of his just debts, due or owing by him, causing thereby annoyance to his superior officer or scandal to the service; or

(o) Has used or threatened to use or attempted to use political influence in securing promotion, lwave of absence, transfer, change of grade, pay or character of work; or

RULE XII - TERMINATION OF SERVICES

Section 5. CAUSE FOR DISCHARGE OR REDUCTION:

(p) Has directly or indirectly solicited or received or been in any manner concerned in soliciting or receiving assessment, subscription, or contribution for any political party of purpose whatsoever; or has solicited, orally or by letter, or been in any manner concerned in soliciting any assessment, subscription or contribution from any person holding a position in the Classified Service (Class "B" & "C", inclusive) for any political party or purpose whatsoever; or

(q) Shall file a petition or application for nominatin for any public office in the City of Hamtramck; or

(r) Has been induced, has induced, or has attempted to induce an officer or employee in the service of the City to commit an unlawful act or to act in violation of any lawful and reasonable department or official regulation or order; or has taken any fee, gift, or other valuable in the course of his work, or in connection with it, for his personal use from any person which such fee, gift or other valuable thing is given in the hope or expectation of receiving a favor or better tratment than that accorded other persons; or

(s) Has been absent from duty, without leave, contrary to the rules of the Civil Service commission, or has failed to report fter the leave of absence has expired or after such leave of absence has been disapproved or revoked and cancelled by the Commission; provided, however, that if such absence or failure to report is excusable, the Appointing Officer and the Civil Service Commission may ignore the charges; or

(t) Any employee found guilty of participating, engaging or cooperating with any group whose program or whose principles are contrary to the best interests of the United States Government and the established traditions of our institutions, shall forthwith be removed from City employment, and any rights or privileges due such employee under the Civil Service Law and the Rules of this Commission shall be cancelled and nulified.

(Whenever in these Rules "Appointing Officer" is used, the term shall include, for the purpose of these Rules, Appointing body; also where the appointment is not made by an individual officer).

APP 34

(S E A L)

CITY OF HAMTRAMCK
DEPARTMENT OF POLICE
HAMTRAMCK, MICHIGAN 48212

ARTHUR A. CHOJNACKI
CHIEF OF POLICE

September 10, 1970

Mr. Richard Wisz
Director of Public Safety
City of Hamtramck, Michigan

Re: Patrolman Percy Harris, #41

Dear Sir:

On September 10, 1970, at 10:00 a.m., an inquiry and hearing was scheduled to be held in my office. At 10:21 a.m., I called the hearing to order. Present were Lieutenant Stanley Biernacki, Sergeant John Sitek, Patrolman Larry Kulhavi, and Switchboard Operator Judy Anderson. Patrolman Percy Harris did not appear and no communication from him was received.

Patroman Percy Harris was served a letter, notifying him of the date and time of this hearing, by Sergeant John Watson on September 8, 1970. Patrolman Percy Harris accepted the letter and signed a receipt for it.

In reviewing the charges submitted by Lieutenant Stanley Biernacki, I concur in said suspension and find it necessary for the good order and discipline of the Hamtramck Police Department to prefer charges of the rules and Regulations of the Hamtramck Police Department against Patrolman Percy Harris to wit:

General Rules --Section 91 - "Privacy of Department Records."

On Friday, August 28, 1970, at approximately 4:45 p.m., Patrolman Percy Harris, without obtaining permission, opened a department filing cabinet and removed a beat-assignment book

s\s Chief A. A. C. (cursor)

CITY OF HAMTRAMCK
DEPARTMENT OF POLICE
HAMTRAMCK, MICHIGAN 48212

ARTHUR A. CHOJNACKI
CHIEF OF POLICE

2-- Departmental Hearing for Percy Harris - September 10, 1970

(belonging to Sergeant Willie Coleman).

Section 90 - "Obedience to Orders"

On Friday, Aubust 28, 1970 at approximately 4:45 p.m., Patrolman Percy Harris refused a direct order given by Sergeant John Sitek to return the book.

Offenses - Section 124, sub-section 8, - "Conduct Unbecoming a Police Officer"

At approximately 4:45 p.m. on august 28, 1970, after Patrolman Percy Harris removed the book from a filing cabinet, without permission, and refused a direct order to return it, he made a threatening gesture with his fist at Sergeant Sitek, when he came to the front of the desk. When the Sergeant reached to retrieve the book, Patrolman Percy Harris shoved or struck Sergeant Sitek in the area of the throat, kncking him backwards against the desk, and then advanced toward him. Sergeant Sitek pushed Patrolman Harris away from him. Patrolman Percy Harris then pulled out his gun and pointed it at Sergeant John Sitek, threatening him, while attempting to cock it.

I find that the charges have been substantiated and recommend the dismissal of Patrolman Percy Harris from the Hamtramck Police Department. Not only did Patrolman Percy Harris fail to appear on this date, but he also failed to appear on August 31, 1970, at 1:00 p.m. as ordered by Lieutenant Stanley Biernacki.

I request that a Hearing be set by you on the above charges.

Respectfully submitted,

s/s Arthur A. Chojnacki
Arthur A. Chojnacki, Chief of Police

(CURSOR)
S/S J. Harjay
7/16/78
11:30 a.m.

(CURSOR)
S/S P. James
7/12/78
11:50 a.m.

RULES AND REGULATIONS

Of The

HAMTRAMCK CIVIL SERVICE COMMISSION
HAMTRAMCK, MICHIGAN

* * * * * * * * * * * * * * * * *

Under and pursuant to Section 12, sub-section C, and Section 13, sub-section 3, of the Civil Service Amendment, Chapter IX-A to the Hamtramck City Charter, the HAMTRAMCK CIVIL SERVICE COMMISSION does hereby adopt the following rules and Regulations, February 14, 1945, to become effective as of February 20, 1945.

(C.S.A. Sec. 11)

* * * * * * * * *

RULE I - ALTERING AND AMENDING OF RULES

Section 1. EXPLANATION OF:

These Rules and regulations may be altered or amended following a three (3) day notice at the will of the Civil Service Commission.

(C.S.A. Sec. 13, sub-sec. 3)

RULE XII - TERMINATION OF SERVICE

Section 1. - RESIGNATIONS:

If any employee resigns from the Classified Service, (Class B & C, inclusive), without giving the required 15 day notice, or such notice that is satisfactory to the Appointing Authority, he shall be held as not having resigned in good standing and such fact shall be reported to the Personnel Director and entered as a part of the employee's record.

Section 2. WITHDRAWAL OF RESIGNATIONS:

Any employee who has resigned in good standing, may within 6 months after the effective date of his resignation, withdraw such resignation with the approval of the civil Service Commission and the Appointing authroity under whose jurisdiction he was employed and be restored to the position if it is still vacant, or filed by a temporary employee.

Section 3. STATUS OF RESIGNED EMPLOYEE WHEN POSITION IS FILLED:

If the position which he vacated has been discontinued, or is filled by a permanent employee, or if the withdrawal of his resignation is approved and he is not restored to his former position or appointed to another position in the class, his name shall be placed on the Re-employmet List for the Class, as of the date of the withdrawal and will be eligible for re-employment within 2 years thereafter when vacancies in the class occur.

(C.S.A. Sec. 25)

Section 4. LAYOFFS

When it becomes necessary in any department, through lack of work or funds or other causes, to reduce the number of employees, all emergency, temporary, provisional, and seasonal employees, if any, shall be laid off first and in the order named; and thereafter, in the order of seniority in the department.

(C.S.A. Sec. 27)

Section 5. CAUSE FOR DISCHARGE OR REDUCTION:

The following are declared to be cause for removal or discharge from the Classified Service, (Class B & C, inclusive), of the City of Hamtramck, though charges may be based upon causes other than those enumerated; viz., that any officer or employee who:

(a) Has been convicted of a criminal offense or of a misdemeanor involving moral turpitude; or

(b) Has been guilty of an immoral or criminal act:

(1) but if such act is, at the time the charge is being considered, involved in a criminal proceeding before the grand jury or the courts, the officer

RULE XIII - IN-SERVICE ACTIVITIES (Cont'd)

Section 7. POLITICAL ACTIVITIES: (Cont'd)

(d) No officer or employee in the City Classified Service, (Class B & C, inclusive), shall directly or indirectly make, solicit, or receive or be in any manner concerned in making, soliciting, or receiving any assessment, subscription, orr contribution for any political party or any political purpose whatsoever.

(1) Assessment, subscription, or contribution are defined to include: Money, property, or personal services.

(e) No person during the hours of duty shall engage in any form of political activity, or at any time become a candidate or take part in political activities or campaigns for any public office in the City of Hamtramck.

(f) This shall not interfere with the right to each employee to vote as he pleases and to express freely his political opinions.

(C.S.A. Sec. 32-33)

RULE XIV - HEARINGS

Section 1. APPEAL FOR HEARING:

Any employee in the Classified Service, (Class B & C, inclusive), of the City of Hamtramck, considering himself aggrieved or discriminated against contrary to the Charter or these Rules, shall first bring notice of the condition to his Appointing Authority; and if the grievance is not adjusted or satisfactory arrangements made by the Appointing authority, then the employee may appeal to the Civil Service Commission.

Section 2. CONDUCT OF HEARINGS:

One of the functions of the Commission shall be to conduct, upon request or upon its own motion, Hearings or investigations of complaints in cases of suspensions, removal, discharge or investigations of

working conditions bearing upon the morale of employees in the Classified Service, (Class B & C, inclusive). The Commission shall conduct its Hearings informally and impartially, in such manner as it deems best calculated to arrive at the correctness of the charges preferred, and without regard to any technical rules of procedure or evidence. Meetings shall be called by the Secretary of the Commission when a request has been made for a Hearing under this Section.

Section 3. PROCEDURE OF DISCHARGE OR SUSPENSION:

When an Appointing Officer has good reason to believe the any regular employee in the Classified Service (Class B & C, inclusive), under his jurisdiction, has given cause for his reduction, either in

Section 3. PROCEDURE OF DISCHARGE ON SUSPENSION: (Cont'd)

rank or compensation, suspension or for his discharge from service, he shall notify said employee, in writing, served personally or through the mails, at his last known address, setting forth the charges against him. A copy of this communication shall, at the same time, be filed with the Civil Service Commission.

(a) Within ten (10) days from the date of the mailing to him, at his last known address, or the serving upon him of such notice, the

employee may request, in writing, that he be given a Hearing before the Civil Service Commission.

(b) In lieu of a Hearing before said Commission, such employee may, within five (5) days, reply to the charges, in writing, in which case the said reply shall be served by said employee upon the officer making the charges, and a copy of said reply filed with the Civil Service Commission.

(c) After receiving said reply, said Appointing Officer shall consider said charges and reply, and he may make or cause to be made any investigation which he may see fit to ascertain the truth or falsity of the charges and reply, and shall then take such action, as, in his judgment, the case warrants. His decision shall be in writing and shall be served upon the employee in the same manner that the charges were served, and the copy shall be filed with the Civil Service Commission.

(d) Service of this decision upon the employee shall constitute his discharge, suspension, reduction, or exoneration, as the case may be. The charges, reply, and order of discharge, suspension, reduction or exoneration shall be preserved as public records by the Civil Service Commission.

(e) In the event the employee desires a Hearing before the Commission, said Commission shall within ten (10) days of the demand for a Hearing set a date for such Hearing.

(f) If, after having heard whatever evidence it deems sufficient in the case, the decision of the Commission, by majority vote, is for suspension, removal or reduction of the employee charged, the Appointing Officer having jurisdiction over such employee shall then formally make the said suspension, removal or reduction, as the case may be.

(g) If, in the opinion of said Commission, the evidence presented at the Hearing does not warrant a suspension, removal or reduction, the Commission may make findings based upon the evidence presented and such findings shall be binding upon the Appointing Officer.

(h) If the employee charged fails to appear before said Commission, in accordance with said notice, or if he has not requested a Hearing as prescribed in this Section, the Appointing Officer shall suspend, remove or reduce said employee, as the case may be.

Hamtramck, Michigan
August 20, 1979

* * *

MR. LISKA: This hearing is now in session. The reason for this hearing is simply that the City charter, Chapter 9A, Section 30, under the Civil Service Commission states: any employee under the Civil Service Commission, who has been penalized has the right to appeal the penalty to the Civil Service Commission. The Commission, after holding its hearing, can affirm, modify or revoke the penalty.

Officer Harris asked for a hearing and it is scheduled for today. We have had two previously scheduled hearings that have been postponed at the request of Officer Harris, and certain guidelines of the hearing.

We will have the Safety Director and his witnesses first and Officer Harris and his witnesses second. All of the witnesses will be asked to step outside until they have testified. Once they have testified they can stay in the room. And, in the room are Officer Harris, the Safety Director, and the Chief and all principals involved, who may stay in the hearing.

Specifically, we have three charges, with violations of Section 84: truthfulness required, Section 124, sub-section 10, neglect of duty or inatttention of duty, and 124, sub-section 19, making a false statement.

The three charges are the gist of the hearing and the penalty was given by the Chief and upheld by the Director with a discharge.

And, I can add now, that after the hearing is completed the Civil Service Commission meets to discuss it and makes an attempt to reach a decision. If a decision is reached, all parties are notified by phone within 24 hours and if a decision can not be reached after the hearing, a meeting is scheduled immediately for further discussion and to try and reach a decision.

MR. WISHNOW: Before anybody puts any type of evidence on the record, I have a motion or request of the Commission. It appears that Lieutenant Harris through the union, as a police ranking officer has filed serveral grievances in regard to the suspension made of him by the Chief and upheld by the Director of Public Safety. These are grievances pending through the grievance machinery provided by the contract. I request of the Commission that the proceedings be adjourned and postponed until a date that is determined by the Commission or Counsel, as the case may be, or an Arbitrator if it goes that far, until the grievances filed by Lieutenant Harris are adjudicated as important grievances under the contract and in regard to his relationship and working condition with the City.

MR. LISKA: Let me answer that this way. If I understand correctly, we are here because Officer Harris' situation. I am offering this to you, not by way of sustenance evidence. We

assured that they did their job and acted accordingly. We don't have bring witnesses here for that.

MR. LISKA: Since there is no rebuttal regarding the charges concerning the procedural hang-up, I ask for affirmation by the Commission.

MR. WISHNOW: I have nothing further.

MR. LISKA: Regarding the procedural matter, this is really not our job. In regard to the free speech issue, I for one, had so many questions to ask as to which one is a lie and so on and I just have to go by what I saw and heard on the tapes.

All we're going to do is affirm, modify or revoke the penalty, and it's going to be difficult in my mind to make an honest judgment, but we'll sure give it a try.

MR. CANHAM: That's all we can ask the Commission.

MR. LISKA: We will try to reach a decision and talk about it and notify the proper people involved by telephone or mail.

Thank you. This hearing is concluded.

STATE OF MICHIGAN)
)SS
COUNTY OF WAYNE)

I hereby certify that the above and foregoing is a true and correct transcript of the proceedings taken before me on the 20th day of August, 1979.

s/s Sandra J. Poljanac
Sandra J. Poljanac, Notary Public
Wayne County, Michigan R 2302
My commission expires Dec. 20, 1982

APP 49

F. S. Van Tiem

313/226-3380

March 14, 1977

Department of Justice
Civil Rights Division
Employment Section
Washington, D.C. 20530

Re: Lieutenant Wallace Wilson, Chief Arthur A. Kojnacki, Hamtramck Police Department
Percy Harris, Jr. - Victim; Civil Rights

Dear Sir/Madam:

Attached are two letters, one dated October 16, 1976 and one dated August 30, 1971, regarding the above-captioned matter. Also enclosed is a copy of an FBI report to this Bureau of Investigation by John Conley, Chief of the Criminal Division in this office. Mr. Harris is presently a litigant in a civil action before U.S. District Judge Ralph Guy, Jr., and it is the understanding of this office that Department of Justice policy is not to initiate a criminal investigation during the pendency of civil litigation.

Subsequent to the initial contact by Mr. Harris, there was a conference between Detective Harris and Mr. Conley. Based on that, I felt it appropriate to forward this information to you even though a civil suit is pending to as to avoid any possible statute of limitations problems.

Very truly yours,

PHILIP VAN DAM
United States Attorney

Frederick S. Van Tiem
Chief Assistant U.S.
Attorney

FSVT: CLMW
encls.

SEAL

U.S. Department of Justice
Office of Information and Privacy

Telephone: (202)514-3642 *Washington, D.C. 20530*

s/s Date Stamp SEP 4 1996

Mr. Percy Harris
Post Office Box 14231
Detroit, MI 48214

Re: Appeal No. 96-0986
RLH:SAH:ERW

Dear Mr. Harris:

You appealed from the action of the Chicago Field Office of the Federal Bureau of Investigation on your request for access to a copy of a tape recording of

a telephone conversation in which you were a participant.

After careful consideration of your appeal, I have decided to affirm the initial action in this case. One document, which was retrieved from the FBI's Electronic Surveillance Index and processed by the Chicago Field Office,is exempt from the access provision of the Privacy Act of 1974 pursuant to 5 U.S.C. § 552a (k)(1). See 28 C.F.R. § 16.96 (C)(1) (1995). Accordingly, your access rights are limited to those provided by the Freedom of Information Act. This document, which is the onlymaterial withheld from you, is classified and I am affirming the denial of access to it on the basis of 5 U.S.C. § 552 (b)(1). The document underwent a declassification review by the FBI pursuant to Executive Order No. 12958. It is now being referred to the Department Review Committee for an additional review and a determination whether it warrants continued classification under Executive Order No. 12958. You will be notified if the Committee's final decision results in the declassification of any information. Please be advised that this document does not pertain to an alleged telephone call from you to the headquarters of the Black Panther Party.

Judicial review of my action on thisappeal is available to you in the United States District Court for the judicial district in which you reside or have your principal place of business, or in the District of Columbia, or in the Northern District of Illinois, which is where the record you seek is located.

Sincerely,

s/s Richard L. Huff
Richard L. Huff
Co-Director

cc: Honorable John Conyers, Jr.

January 12, 1979

Lieutenant Percy Harris
Hamtramck Police Department
Hamtramck, Michigan 48212

Lieutenant Harris:

Please be advised pursuant to Articles XIII and XIV of the City of Hamtramck Police Ranking Officers Association Collective Bargaining Agreement, that you are hereby notified your statements made on interviews conducted on WDET-FM and broadcast through their facilities on Friday, January 5, 1979 at or about 7:30 p.m., and Channel 50, WKBD and telecast through its facilities on Sunday, January 7, 1979, at or about 11:30 p.m., wherein you imputed criminal activity to the members of the Hamtramck Police Department, constitutes conduct detrimental to the efficient operation of the Police Department, thereby rendering your statements to be conduct unbecoming a police

officer, insubordination which may result in your removal, discharge, suspension or reduction in rank or pay.

s/s JOHN SITEK
JOHN SITEK
Chief of Police

RECEIVED BY s/s Percy Harris,Jr. DATE S/S1/13/79 TIME s/s11:50am
SERVED BY s/s Philip M. Peczeniuk DATE S/S 1-13-79 TIME S/S 11:50A.M.

SEAL
CITY OF HAMTRAMCK
DEPARTMENT OF POLICE
HAMTRAMCK, MICHIGAN 48212

JOHN SITEK
CHIEF OF POLICE

PHONE:
872-1500

May 18, 1979

Mr. Percy Harris Jr.
2377 Grayling
Hamtramck, MI 48212

Mr. Harris:

Be advised that I am charging you with the following violations of the Hamtramck Police Department Rules and Regulations;

Section	84	Truthfulness unbecoming an officer

Section 124-8	Conduct unbecoming an officer
9	Insubordination and disrespect
10	Neglect of duty or inattention to duty
19	Making a false statement

The above mentioned charges have been brought about in part because of your failure to substantiate your accusations to the news media and for other related reasons. In this regard I refer you to my letter of this date to the Director of Public Safety.

s/s John Sitek
John Sitek
Chief of Police

cc Director
Civil Service
Legal Dept.

Received By_____Date_____ Time_____
Percy Harris Jr.

_____Date_____Time_____
Witness

APP 55

(SEAL)
CITY OF HAMTRAMCK
DEPARTMENT OF POLICE
HAMTRAMCK, MICHIGAN 48212

JOHN SITEK
CHIEF OF POLICE

PHONE:
872-1500

May 21, 1979

Lt. Percy Harris Jr.
Hamtramck Police Dept.

Lt. Harris:

You are hereby being placed under suspension and relieved of your police powers and ordered to submit all departmental properties assigned to you pending the hearings and disciplinary findings by the Director of Public Safety on separate charges submitted by myself and charges submitted by Detective Milewski.

s/s John Sitek
John Sitek
Chief of Police

cc Director
Civil Service
Legal Dept.

APP 56

(SEAL)

CITY OF HAMTRAMCK

DEPARTMENT OF POLICE

Hamtramck, Michigan 48212

John Sitek
Chief of Police

PHONE:
872-1500

May 18, 1979

Director Henry Jablynski
Director of Public Safety
City of Hamtramck
Hamtramck, Michigan 48212

Dear Director Jablynski:

It is my duty at this time to recommend that Detective Lieutenant Percy Harris, Jr. be immediately relieved of active duty, that he be required to surrender his badge, and his service revolver, etc., and that you as Director of Public Safety convene an immediate hearing to determine whether grounds exist for permanent dismissal. I make this recommendation upon the following facts and for the following reasons.

Lieutenant Percy Harris made statements on interviews conducted on WDET-FM and broadcast through their faciities on Friday, January 5, 1979 at or about 7:30 p.m. and Channel 50, WKBD and telecast through its facilities on Sunday, January 7, 1979, at or about 11:30 p.m. wherein he imputed criminal activity to the members of the Hamtramck

Police Department. Upon notification to me by members of the general public who were witnesses to these interviews, Lieutenant Harris was put on notice by my letter of January 12, 1979 that his participation in those interviews constituted conduct detrimental to the efficient operation of the police department, conduct unbecoming a police officer, and insubordination which could result in his removal, discharge, suspension or reduction in rank or pay.

Rather than attempting hastily to make any final determinations exclusively by myself on the impropriety of Lieutenant Harris' allegations during these interviews, perhaps especially because I was myself singled out by Lieutenant Harris during these interviews as an object of his allegations, I thought it proper to submit investigation of Lieutenant Harris' allegations to a neutral party. Consequently, by a letter dated January 17, 1979 and addressed to Mr. William L. Cahalan, the Wayne County Prosecutor, intervention by the prosecutor's office was requestd "for the reason that it is imperative that the truth or falseness of these charges be determined at the earliest possible moment and the investigation be conducted by an agency outside of the jurisdiction of the city of Hamtramck."

In this letter to Mr. Cahalan, the Prosecutor's office for Wayne County was urged expeditiously to investigate Lieutenant Harris' allegations, and either prosecute whatever wrongdoing they might uncover, or clear the agents of law enforcement in the city of Hamtramck on the charges and allegations tainting

and clouding the effective enforcement of their duties.

On April 26, 1979, in a letter addressed to Mr. James N. Canham, an attorney representing the city of Hamtramck in this matter, Dominick R. Carnovale, chief Assistant Prosecuting Attorney for Wayne County, indicated that "Lieutenant Harris was advised [that] if he has sufficient evidence of actual wrongdoing on the part of the Hamtramck Police Department . . . he present it to this office." That same letter went on as follows: "He has presented nothing other than two incidents which had already been reviewed by other assistant prosecutors in this office over a period of time and in no case was there sufficient evidence to pursue the matter further." In that Lieutenant Harris has failed to substantiate any of his allegations, it is only proper to assume, and it must be concluded that the charges be made implicating the Hamtramck Police Department in criminal acts were false, damaging, insubordinate, and unbecoming a police officer of his rank and responsibility.

I have not attempted in this letter to identify in complete detail each and every improper allegation made across the air waves by Lieutenant Percy Harris, Jr. In some cases I have conclusive documentary proof of the falsehood of assertions made by him. At any rate, you may be assured that I am available to answer any questions you might have on this matter.

Very truly yours,

s\s John Sitek
John Sitek
Chief Of Police

cc Lieutenant Percy Harris, Jr.
Civil Service Commission
Legal Department

2377 Grayling Street
Hamtramck, Michigan 48212
December 1, 1980

District Court 32A
19617 Harper Avenue
Harper Woods, Michigan 48225

Dear Judge La Rose:

Case #OR-80-2800, entitled "Sylvester M. Amejka vs. Percy Harris Jr.," is scheduled for trial on Tuesday, December 9, 1980.

As the defendant in the case, I am now asking for my first adjournment, from the aforementioned date, until at least after January 31, 1981. As you will recall, I was ready for trial at the last hearing in this matter; however,

the plaintiff, Mr. Amejka, asked for, and was granted a ninety (90) day adjournment.

The principal reason for my need for the adjournment is that I am scheduled to attend a two week, eight hours a day seminar on "Advanced Criminal Investigation," starting on Monday, December 8, 1980, at South Macomb Community College Attendance, is job related. Hopefully, I will be accorded the same consideration as Mr. Amejka.

Sincerely,

s/s Percy Harris, Jr.
Percy Harris, Jr.

cc Judge Walter Peruk
31st District Court
3401 Evaline Street
Hamtramck, MI 48212

Ronald Robinson
Attorney-At-Law
2150 Edison Plaza
Detroit, MI 48226

APP 61

Newspaper Article

Tuesday

THE SOUTH END

February 19, 1980

CIVIL SERVICE COMMISSIONER CHARGES HARRIS WITH ASSAULT

By MICHAEL BENCSIK
South End Staff Writer

Former Detective Lt. Percy Harris Jr. of the Hamtramck police department has been granted a change of venue to Harper Woods in his upcoming trial on assault and battery charges, scheduled for March 3.

APP 62

Harris is accused of throwing plastic champagne glasses at Sylvester Amjejka, the Hamtramck director to the civil service commission on Jan. 2, in an argument in the director's office.

According to Harris, he had gone to Amejka's office to deliver a letter requesting documents from the commission. He further relates that Amejka refused to acknowledge the letter and a brief argument ensued before he left.

Harris was arraigned Jan. 11, in Hamtramck's 31st District Court. According to the warrant, as read by Judge Paruk, Amejka claims he was assaulted by Harris, who "beat, wounded and bruised" him with the plastic glasses.

In an interview on the day of the arraignment, amejka retained his position of having been assalted. "He threw six goblets at me," Amejka said. "They hit me."

Amejka also said the goblets that wounded him "were of the heavier plastic type."

City attorney, Edmund Torcellini, issued the warrant against Harris even though there are no witnesses to the alleged incident.

"He did it, he took one of those plastic glasses and threw it at the director of the civil service commission," Torcellini said. "He didn't cripple him or send him to the hospital, but he did it."

An investigation of the incident has taken place with the glasses being sent to the state police for fingerprinting.

The report on those prints show that a variety of people had handled the glasses, however, none of the prints match Harris'.

Harris claims that this is

(continued on page 3)

VICTIMIZED COP CHARGED WITH "PLASTIC" ASSAULT
(continued from page 1)

just another attempt by some members of the city to rid him of the community because of his charges of wrongdoing by other police officials.

Harris has been accused of a variety of misdeeds by various police officials since he has made complaints about official corruption.

He has also been a target and victim of violence.

In 1978, his car windows were blasted out by a shotgun. His windows were broken out again in 1979.

Harris suspects members of the police department were behind both incidents.

Since that time he says that he and members of his family have received threatening phone calls. He has even been followed by the police when travelling in Hamtramck.

Harris was fired from the department last fall for statements he made on radio and television alleging that Hamtramck detectives were falsifying warrant requests and that the chief, John Sitek, framed him on a felonious assault charge in 1970.

Harris, at first convicted on that charge, was later granted a new trial and found not guilty.

Recent information obtained by Harris and *The South End* through the Freedom of Information Act, show that statements given by witnesses to the felonious assault incident were either deliberately falsified or misdated with the knowledge of several people, including police officials.

Harris came to the *The South End* after the *Detroit News* and *Free Press* refused to listen to his story.

Harris has complained to a variety of government agencies about the alleged injustices done him, but so far no action has been taken.

The FBI, however is currently conducting an investigation into allegations of bribery and corruption in the Hamtramck police department.

WE'RE SORRY:

Yesterday, Detective Sgt. Andrew P. Kozinski and former Det. Lt. Percy Harris Jr. of the Hamtramck police department were incorrectly identified as Detroit officers. We regret the error.

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DETROIT OFFICE
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DETROIT, MICHIGAN 48226-4008

OF COUNSEL
JOSEPH J. BILETI

September 19, 1996

Mr. Percy Harris, Jr.
P.O. Box 14231
Detroit, MI 48214

RE: Percy Harris, Jr. v. Hamtramck et al

Dear Mr. Harris:

Pursuant to your telephone request of September 12, 1996, I have reviewed all of the closed files currently in our possession relative to your case. I regret to inform

you that I was unable to locate any of the specific documents you requested.

According to our records, we do not have copies of transcripts of the Civil Service Commission hearings, including the ones you have requested from 1970. Further, our closed files show that you have made several Freedom of Information Act requests in the past regarding these and other documents and that any and all documents in our possession were given to you or your attorneys at the time of these requests. Additionally, in 1981, you were given an opportunity to review your personnel file. It is noted that in our conversation of September 18, 1996, you advised that you have photocopies of all or most of the documents you seek from us.

As with your earlier request this year in February of 1996 (see letter dated February 28, 1996), we have again made a diligent inquiry to determine the existence of any Civil Service transcripts, and a list of the charges you have requested. We have been unable to locate these documents. Please be assured, however, if we had the documents or should there whereabouts become known to us in the future, we would be happy to provide them to you. In any event, we would like to come to closure on this issue, seeing that you have made several requests regarding the same documents.

Thank you for your cooperation and attention in this matter. If you have any further questions or concerns regarding this issue, please feel free to contact either me or James V. Bellanca, Jr. at our office at (313) 882-1100.

Very truly yours,

s/s Lawrence J. Paolucci
Lawrence J. Paolucci

LJP/ag
cc:James V. Bellanca, Jr.

MS. SMITH: No. because that was not addressed to the city attorney. Apparently there was something else here because Mr. Cahill is writing to Mr. Harris and not Mr. Zeman (phonetic).

"You have now recently requested payment. That's the second paragraph.

THE COURT: What letter are you talking about?

MS. SMITH: Exhibit C. July 9, 1990. You have now recently requested payment of "certain pension benefits pursuant to the above judgment.

THE COURT: Well, that's what this says. You show me the written letter that was signed by Mr. Harris or his agent that said that and maybe I'll go back further.

This is Mr. Cahill's response to this long letter. I don't see anywhere in this letter that Mr. Harris asked that his pension rights under the consent judgment commence.

All right. Thank you very much. I think this comes down to the question of 1) The interpretation of the Highland Park Pension Rule. It says pensions will begin when a written application is made. I construe that rule to require that the application in writing be made by the pensioner or an authorized agent on this behalf. I don't see where that has occurred prior to

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August 11, 1992. I will order that the pension commence as of that date.

MS. SMITH: There is one more issue, your Honor.

THE COURT: And what is that?

MS. SMITH: Whether Mr. Harris is entitled to interest on the retroactive benefits and how is that interest computed. I know there is a provision in the mandamus statute for interest. There is also a provision under state law for prejudgment interest back to the date of the filing of this complaint.

The question arises, if it's by statute, does it go back to the 1981 date when he filed the complaint in court or does it go only to the date when he filed this case. Again, trying to get his pension benefits.

THE COURT: Well, I thought it was an interest issue why he came here to enforce the consent judgment. The federal court after deciding some jurisdictional issues decided Ihad jurisdiction but I don't plan to give interest based upon a federal court judgment. I'll give interest from the date of filing the complaint in this case at the judgment interest rate.

Collective Bargaining Agreement
July 1, 1977 thru June 30, 1979

ARTICLE X, HOURS OF EMPLOYMENT

IN PART

ARTICLE XI, PENSIONS AND RETIREMENTS

Current bargaining unit personnel shall be appropriately subject to and entitled to pensions and retirements as provided in the two (2) amendments. Any future Charter amendments shall be mutually discussed.

ARTICLE XII, STRIKE PROHIBITION

The LODGE will not engage in or sanction strike action during the life of this Agreement.

ARTICLE XIII. DISCIPLINE

No employee shall be removed, discharged, reduced in rank or pay, suspended or otherwise punished, except for cause, and in no event until he shall have been furnished with a written statement of the charges and the reasons for such actions and all charges shall be void unless filed within five (5) days after the occurrence of the alleged violation. In any trial board proceeding, the employee shall have reasonable time to prepare for the defense against charges preferred and shall have the right to counsel and shall be afforded due process.